REPORT

OF THE

NORTH DAKOTA LEGISLATIVE COUNCIL

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

SIXTY-FIRST LEGISLATIVE ASSEMBLY
2009

TABLE OF CONTENTS

Chairman's Letter 1

History and Functions of the North Dakota Legislative Council 2-3

North Dakota Legislative Council Committee Membership and Staff 4-9

Summary of Committee Reports 10-20

Report and Recommendations

Administrative Rules

Study of Agency Exemptions From the Administrative Agencies Practice Act 21
Conclusion 21
Occupational and Professional Laws and Rules Violation Penalties Study 21
Recommendation 22
Administrative Agency Rules Review 22
Current Rulemaking Statistics 23
Rule Review Schedule 23
Recommendation 23
Committee Action on Rules Reviewed 23
Repealing Obsolete Rules 23
Voiding Rules 24
Rules Carried Over or Amended by Committee Approval 24
Rules Voided by Committee 24
Table A - Statistical Summary of Rulemaking 26

Advisory Commission on Intergovernmental Relations

2007-08 Interim Areas of Study 27
Extraterritorial Zoning Authority Study 27
History of Extraterritorial Zoning Authority 28
Other Laws Relating to Extraterritorial Zoning Authority 29
Zoning in General 29
Extraterritorial Subdivision Regulation 29
Regional Planning and Zoning Commissions 29
Annexation 30
Testimony and Discussion 30
Landfill Siting Hearing Bill Draft 32
Density Restrictions Bill Draft 33
Board of County Commissioners Approval Bill Drafts 33
Joint Jurisdiction - Dispute Resolution by Office of Administrative Hearings Bill Draft 33
Joint Jurisdiction - Outside Half Bill Draft 33
Joint Jurisdiction - 10-Year Growth Plan - Dispute Resolution by Office of Administrative Hearings Bill Draft 34
Joint Jurisdiction - Outside Half - Dispute Resolution by Office of Administrative Hearings Bill Draft 34
Joint Jurisdiction - Outside Half - 20-Year Growth Plan - District Court - Dispute Resolution Bill Draft 35
Repeal of Extraterritorial Zoning and Subdivision Regulation Authority Bill Draft 35
Extraterritorial Zoning Authority of One-Half Mile and Similar Regulation Bill Draft 36
Repeal of Sunset on Present Extraterritorial Zoning Authority Law Bill Draft 36
Joint Jurisdiction - Outside Half - Dispute Resolution by Administrative Law Judge Using Factors Bill Draft 36
Recommendation 37
Feedlot Zoning 37
State Aid Distribution Fund 37

Personal Property Tax Replacement....37
State Revenue Sharing....37
State Aid Distribution Fund....37
2007 Legislation....38
Testimony and Discussion....39
Rural Roads and Bridges....39
Charitable Organizations' Property Tax Exemptions....39
2005-06 Interim Study....39
Testimony and Discussion....39
Alternatives to Expressing Property Tax Levies in Mills....39
2007 Legislation....40
Commission Discussion....40
State's Attorneys in Rural Areas....40
Statutory Provisions....40
Legislative History and Attorney General's Opinions....41
Testimony and Discussion....42
Report on County Document Preservation Funds....42
History....42

Agriculture
North Dakota Century Code Provisions Relating to Agriculture....43
Objectives and Scope of Committee's Efforts....43
Omitted Provisions....44
Cross-Reference Table - Agricultural Commodities....44
Cross-Reference Table - Noxious Weeds....46
Cross-Reference Table for Proposed Sections - Agricultural Commodities....46
Cross-Reference Table for Proposed Sections - Noxious Weeds....48
Committee Recommendations....48
Miscellaneous....48

Budget and Finance
North Dakota's Budgeting Process....49
Revenue Projection Process....49
2007-09 Biennium Budget Information....50
Status of the General Fund and Selected Other Funds....50
North Dakota Economy....51
Oil-Related Information....51
Property Tax Income Tax Credits....52
Status of Agency Expenditures....52
2009-11 Biennium Budget Information....52
Agency Budget Requests....52
Preliminary Revenue Forecast....53
Potential 2009-11 Biennium Transfers to the General Fund....53
State Debt....53
Committee Considerations....53
Format of Appropriation Bills....54
Committee Recommendations....55
Deferred Maintenance/Extraordinary Repairs....55
Other Information....56

Budget Section
Office of Management and Budget....63
Final 2005-07 Biennium General Fund Revenues and Expenditures....63
2005-07 Biennium General Fund Deficiency Appropriations and General Fund Turnback....64
Status of the General Fund....64
Status of the Permanent Oil Tax Trust Fund....64
Tobacco Settlement Proceeds....64

Fiscal Irregularities 65
2009-11 Biennium Budget Form Changes 65
Budget Data Recommendation 66
Status of the Risk Management Workers' Compensation Program 66
Higher Education 66
Capital Projects 66
Local Funds - Higher Education Construction Projects 67
State Board of Agricultural Research and Education Status Report 67
Information Technology Department 67
Annual Reports 67
Loan Request 67
Department of Human Services 68
Transfers in Excess of $50,000 68
Status of Medicaid Management Information System 68
Enhancement of County Eligibility Systems 68
Status of Medicaid Reimbursements 69
Capital Projects 69
State Hospital 69
Department of Commerce 69
Annual Audits of Renaissance Fund Organizations 69
Centers of Excellence 69
Centers of Excellence Audit Reports 70
Department of Corrections and Rehabilitation 70
Correctional Facility Review Committee Recommendation to the Emergency Commission 70
Space, Operational, and Staffing Plan 70
Inmate Medical System 71
Public Service Commission 71
State Fair Association 71
Agriculture Commissioner 71
Status of the State Meat Inspection Program 71
Status of the Endangered Species Program 72
Attorney General 72
Status of the New Crime Laboratory Building 72
Veterans Home 72
Workforce Safety and Insurance 73
Game and Fish Department 73
Land Acquisition Requests 73
Oliver County 73
Williston 73
Job Service North Dakota 73
Status of the Job Insurance Trust Fund 73
Correspondence From Ethanol Plants 74
State Agency Unclaimed Property 74
Legislative Hearings for Federal Block Grants 74
Background 74
Recommendation 74
Federal Funds 74
Legislative Council Staff Reports 74
Agency Requests Authorized by the Emergency Commission 75
Status of the State Contingencies Appropriation 75
Other Reports 75
Agency Requests Considered by the Budget Section 76
Adjutant General 76
Department of Agriculture 76
Attorney General 76
Department of Corrections and Rehabilitation 76
Council on the Arts 76

Game and Fish Department 76
State Department of Health 76
Industrial Commission 76
Information Technology Department 77
Office of Management and Budget 77
Department of Public Instruction 77
Secretary of State 77
Department of Transportation 77
University of North Dakota 77
Veterans Home 77

Commission on Alternatives to Incarceration
Background 79
Department of Corrections and Rehabilitation 79
Division of Adult Services 79
Division of Juvenile Services and Youth Correctional Center 80
2005-06 Interim Study and 2007 Legislation 80
Electronic Monitoring 80
Executive Budget and Funding Issues 80
Faith-Based Treatment Program 80
Drug Courts 80
Robinson Recovery Center 80
Community Service Programs 81
Cass County Jail Intervention Committee 81
Other Recommendations and Statements 81
Testimony and Commission Considerations 81
Department of Corrections and Rehabilitation 81
Department Reorganization 81
Recidivism and Transition 82
Sexual Offender Task Forces and Electronic Monitoring 82
Dakota Women's Correctional and Rehabilitation Center 82
Tompkins Rehabilitation and Correction Center 82
Faith-Based Community Housing Initiative 82
Department of Human Services 83
Regional Human Service Centers 83
Robinson Recovery Center 83
Drug Courts 83
Community Service Programs 84
Cass County Justice and Mental Health Collaboration Project 84
24/7 Sobriety Program 84
Nongovernmental Programs 84
Youthworks 84
Lutheran Social Services 85
Other Reports 85
Rural Crime and Justice Center 85
Individual Justice Planning Project 85
Pathways to Prosperity 85
Project Peacemaker 85
Hyperbaric Oxygen Treatment 85
Continuation of the Commission 85
Recommendations 86
2009-11 Executive Budget and Funding Issues 86
Community Service Supervision Bill 86
Commission Extension Bill 86
Other Recommendations and Statements 86

Correctional Facility Review

Correctional Facility Review Study 87
Background 87
Department of Corrections and Rehabilitation Services 87
2007-09 Biennium Appropriation 87
Full-Time Equivalent Positions 87
State Penitentiary 87
James River Correctional Center 87
Missouri River Correctional Center 88
Dakota Women's Correctional and Rehabilitation Center 88
Tompkins Rehabilitation and Correction Center 88
Previous Studies 88
Consultant Services and Methodology 89
Study Findings and Recommendations 89
Existing Conditions of the State Penitentiary and Missouri River Correctional Center 89
Projected Needs 89
Site Evaluations 90
Model Facility Design Concept 90
Cost-Benefit Analysis 91
Consultant's Conclusions 91
Consultant's Recommendations 92
Hybrid Plan 93
Recommendation 94
Project Funding 94
Report to Emergency Commission 94
Interagency Agreement 94
Table A - Option 1 Reuse Expansion Concept 95
Table B - NDSP Phased Expansion Concept 96

Education

Identification of High-Risk Behaviors Study 97
Risk Factors 97
Youth Risk Behavior Survey 97
North Dakota Adolescent Suicide Prevention Project 98
National Masonic Foundation for Children - Masonic Model Student Assistance Program 98
Conclusion 98
Promotion of Healthy Lifestyles for Children Study 99
Background 99
North Dakota Initiatives 99
Agency Efforts 99
Healthy North Dakota 100
North Dakota Schools 100
Recommendation 101
Regional Education Associations Study 101
Background 101
North Dakota Statutory Requirements 101
Existing Regional Education Associations 102
Funding 102
Comparable Organizations in Other States 102
Committee Consideration 103
Number of Regional Education Associations 103
Contiguity of School Districts Within a Regional Education Association 103
Size of Governing Boards 103
Membership of Governing Boards 103
Inclusion of Ex Officio Members 103
Term Limits 103

Compensation and Reimbursement of Board Members....103
Employment of Executive Directors....104
Conclusion....104
Appropriateness and Adequacy of High School Curricula Study....104
Background....104
Challenging North Dakota Students....104
South Dakota's "Pathways to Graduation"....105
Indiana's Core 40....106
Committee Consideration....107
North Dakota Commission on Education Improvement....107
Williston Public School District No. 1 v. State of North Dakota....107
Commission Membership....107
2007 Report of the Commission - 2007 Legislative Action....107
Study of Educational Adequacy - Picus Report and Recommendations....108
2009 Report of the Commission....108
Conclusion....109
Other Reports....109

Employee Benefits Programs
Consideration of Retirement and Health Plan Proposals....110
Teachers' Fund for Retirement....110
Bill No. 100....114
Bill No. 109....114
Public Employees Retirement System....114
Bill No. 111....118
Bill No. 112....118
Bill No. 118....119
Bill No. 206....120
Uniform Group Insurance Program....120
Bill No. 113....120
Bill No. 114....120
Bill No. 33....120
Bill No. 84....120
Bill No. 124....120
Bill No. 125....121
Firefighters Relief Association Plans....121
Bill No. 144....121
Additional Committee Responsibilities....121
Employee Benefits Study....121
Survey of State Agencies....121
Survey of Comparable States....122
Agency Training, Tuition, and Professional Dues Policies....122
Committee Considerations....122
Service Awards, Tuition, and Dues....122
Employee Performance Bonuses....123
Employee Recruitment and Retention Bonuses....124
Recommendations....124

Energy Development and Transmission
Comprehensive Energy Policy Study....125
Energy Policy....125
2007 Legislation....126
Testimony and Discussion....126
Coal....127
Generation....127
Transmission....127
Retail Rates....128
Carbon Dioxide and Global Warming....128

Federal Legislation 128
Minnesota Externality Proceeding....129
Carbon Dioxide Reduction 129
Wind 130
Nuclear 131
Biomass....131
Conservation and Efficiency by Consumers....131
Oil and Gas 131
Refining 132
Oil Pipelines 132
Petroleum Marketers 133
Alternative Fuels....133
Biodiesel....133
Hydrogen....134
Bill Drafts Considered by the Committee....134
Extension of Taxable Value of 1.5 Percent Assessed Value for Wind Generators Until 2015....134
Permanent Sales and Use Tax Exemption for Wind-Powered Facility 134
Income Tax Credit for Renewable Energy Extended Until 2015....134
Oil Extraction Tax Exemption for Tertiary Recovery Extended to Unlimited Duration 134
Sales and Use Tax and Severance Tax Exemptions for Beneficiated Coal....135
Extension of Coal Conversion Tax Exemption for Beneficiated Coal for Repowering 135
Energy Conservation and Efficiency Standards for Buildings....135
Sales and Use Tax Exemption for Construction of Natural Gas System for Gas Collected From Oil Wells 136
Construction and Gathering Pipelines Excluded From Public Service Commission Siting Jurisdiction....136
Shortened Time for Designation of a Transmission Facility Route 136
Recommendations 136
Siting and Decommissioning of Commercial Wind Farms Study....137
Other Law and Legislation....137
Other States....138
Testimony and Discussion 138
North Dakota Transmission Authority Report....139
North Dakota Pipeline Authority Report 139
Department of Commerce's Energy Policy Committee Report....139
Emergency Services Communications Coordinating Committee Report....140

Higher Education

Background 141
Previous Legislative Higher Education Studies and Related Legislation 141
Higher Education Study....142
Committee Findings 142
Education Attainment....142
Student Preparation....142
Student Retention and Completion 143
Affordability....143
Accessibility....143
Contribution to Economic Development and Workforce Needs....144
Effectiveness and Efficiency 144
System Functioning and Governance 144
Higher Education Roundtable 145
Higher Education Roundtable Task Forces....145
Further Actions Needed....147
Higher Education Finance 147
Base Funding 147

Proposed Finance Model 147
Performance and Accountability Report 148
Other Information Received 150
Recommendations 151
CCbenefits, Inc. 152
Study of the Provision of Services to Children and Adults Who Are Deaf or Hearing-Impaired 152
Current Population of Deaf or Hearing-Impaired Persons 152
School for the Deaf Administration 152
Services Provided by the School for the Deaf 152
School for the Deaf Facilities 153
Educating Deaf or Hearing-Impaired Students 153
Other States' Schools for the Deaf or Hearing-Impaired 154
Potential Future Services 154
Potential Options for the School for the Deaf 154
Other Information Received 154
Committee Considerations 155
Recommendations 155

Human Services
Temporary Assistance for Needy Families Study 156
Federal TANF Law 156
TANF Funding 157
Assistance to Needy Families 158
Program Recipients 158
TANF Benefits 158
TANF Program Sanctions 159
Closure of TANF Cases 159
Work and Education Participation 159
Other Testimony Received 160
Recommendations 160
Study of Economic Assistance Program Responsibilities of the State and Counties 160
Overview 160
State Appropriations for Economic Assistance Programs 162
County Costs 162
Indian County Payments 163
Fiscal Effect of the Swap Agreement 163
Recommendations 163
Infant Development Program Study 163
Overview 163
Number Served and Staffing 164
Funding 164
Other Testimony Received 165
Recommendations 165
Mandated Health Insurance Coverage 165
Health Insurance Mandate Analysis Costs 165
Insurance Commissioner Recommendation 165
Recommendations 165
State Children's Health Insurance Program Report 165
Medical Assistance Recipients Access to Dental Services Report 166
Immunization Program Transition 166
Overview 166
Federal "317" Vaccine Allocation 166
Program Transition 167
Anticipated Costs 167
Other Information Received 167
Transition Assistance for Child Care Program Report 167
Alternatives-to-Abortion Program Report 167

Nursing Education Consortium Report....167
Drug Utilization Review Board Report....168
Other Information Received....168

Industry, Business, and Labor
Workforce Safety and Insurance Review....170
Background....170
Testimony and Committee Considerations....171
Injured Worker Concerns....171
Medical Provider Concerns....173
Workforce Safety and Insurance Employees....174
Workforce Safety and Insurance Premiums and Financial Reserve....174
Reports of Reviews, Audits, and Evaluations....174
Mutualization of State Workers' Compensation Funds....175
Discretionary Expenditures....175
Recommendation....176
Pharmacy and Pharmacist Regulation Study....176
Background....176
State Board of Pharmacy....176
North Dakota Pharmaceutical Association....176
Pharmacy Operation....176
2007 Legislation....178
Testimony and Committee Considerations....178
State Board of Pharmacy and the North Dakota Pharmaceutical Association....178
Pharmacy Operation....179
Recommendation....179
Wireless Study....180
Background....180
2007 Legislative Proposal....180
Wireless Industry Growth....180
Universal Service Fund....180
Public Service Commission Role....180
Testimony and Committee Considerations....180
Recommendation....181
Licensure, Education, and Training of Electricians Study....181
Background....181
Licensure Requirements....181
Electrician Licensing in Bordering States....182
Testimony and Committee Considerations....182
Conclusion....183
Commerce Department Study....183
Background....183
1999-2000 Interim Study....183
Senate Bill No. 2032 (2001)....184
Department of Commerce Divisions....185
2003 Legislation....187
2005 Legislation....187
2007 Legislation....187
Testimony and Committee Considerations....188
Conclusion....189
Renaissance Zone Conference....189
Insurance Commissioner Report....189
Workforce Safety and Insurance Report....189
Commissioner of Financial Institutions Report....189

Information Technology

Prioritization of Proposed Major Computer Software Projects....191
Information Technology Department Strategic Plan....192
Information Technology Department Annual Report....192
Policies, Standards, and Guidelines....194
Information Technology Plans....194
Major Information Technology Projects....194
Project Management Life Cycle Processes....195
Review of Major Information Technology Projects....196
Legislative Assembly - Legislative Applications Replacement System Computer Project....199
Information Technology Department - Mainframe Migration Project....200
Department of Human Services - Medicaid Management Information System Rewrite Project....200
Department of Corrections and Rehabilitation - Inmate Medical System....200
Information Technology Department Coordination of Services....201
Higher Education....201
Planning, Services, and Major Projects....201
ConnectND System....201
Northern Tier Network....202
Internet2....202
2009-11 Budget Request....202
Elementary and Secondary Education....203
Political Subdivisions....203
Other Information....204
Information Technology Department 2009-11 Budget Request....204
Information Technology Vendor Pool....204
Information Technology Department Vulnerability Assessment and Penetration Testing....205
Independent Verification and Validation....206
Statewide Longitudinal Data System....207
North Dakota Health Information Technology Steering Committee....207
Committee Recommendation....208

Judicial Process

Child Custody - Best State Practices Study....209
North Dakota Law Regarding Child Custody and Visitation Orders....209
Child Custody....209
Visitation....209
Enforcement of Custody and Visitation Orders....210
Modification....210
Mediation....210
Testimony and Committee Considerations....210
Child Custody and Visitation Laws....211
Restricted Operator's License Bill Draft....212
Family Law Mediation Pilot Project....213
Recommendations....214
Exemptions From Judicial Process Study....214
Background....214
Federal Bankruptcy Laws....214
North Dakota Law Regarding Exemptions....214
North Dakota Century Code Chapter 28-22 Exemptions....214
North Dakota Century Code Section 47-18-01 Homestead Exemption....215
Testimony and Committee Considerations....215
The Need for Clarification and Updating of Exemptions....215
Single Exemption Theory....216
Federal Exemptions Option....217
Recommendation....217

Missing Persons Study 217
Background 217
North Dakota Law Enforcement 217
North Dakota Law and Programs Regarding Missing Persons 218
North Dakota Century Code 218
AMBER Alert System 218
Criminal Justice Information Sharing 218
Testimony and Committee Considerations 218
Model Missing Person Legislation 218
State Crime Laboratory 220
Recommendation 220
Domestic Violence Protection Order Process Study 220
Background 220
North Dakota Domestic Violence Law 220
Domestic Violence Protection Orders 221
Testimony and Committee Considerations 221
Gender Bias and Fairness in the Domestic Violence Protection Order Process 221
Efforts to Improve the Domestic Violence Protection Order Process 222
Conclusion 223
Paternity Registry Study 223
Adoption Law 223
Paternity Registry Laws 223
Testimony and Committee Considerations 224
Need for a Paternity Registry 224
Senate Bill No. 2035 (2003) 224
Efficacy of Paternity Registry Laws of Other States 225
Conclusion 225
Comprehensive Status and Trends Report 225
Commission on Legal Counsel for Indigents Annual Report 226

Judiciary

Formation of a State Gaming Commission Study 227
Background 227
The State's Gaming Commissions 227
State Gaming Commission 227
Racing Commission 227
Lottery Advisory Commission 228
Summary of Neighboring States' Gaming Commission Structure 228
South Dakota 228
Minnesota 228
Montana 228
Testimony and Committee Considerations 229
State Gaming Regulatory Differences 229
Role and Need for the State Gaming Commission 230
Racing Commission Concerns 230
Recommendation 231
Abstracters, Title Opinions, and Title Insurance Study 231
Background 231
Abstracts of Title 231
Title Opinions 232
Title Insurance 232
2007 Legislation 232
Testimony and Committee Considerations 232
Evidence of Title and Title Opinion Requirement for Title Insurance 232
Statutory Requirements of Abstracters and Abstract Companies 233
North Dakota Recorders Information Network 234
Licensure of Title Insurance Agents 235
Regulation of Out-of-State Lenders 235

Conclusion 235
Statewide Automated Victim Information and Notification System Study 235
Background....235
North Dakota Law Regarding Victims' Rights....235
House Bill No. 1219 (2007)....236
Testimony and Committee Considerations....236
Desirability of Establishing a SAVIN System....236
SAVIN System Implementation and Funding 237
Recommendation....238
Crime Victim Compensation Funding Study....238
Background....238
North Dakota Law Regarding Crime Victims....238
Victim Services Program 238
Testimony and Committee Considerations....239
Victim Compensation Funding Levels and Sources 239
Other States' Funding of Crime Victim Compensation Programs 239
Recommendation....240
Auctioneer Practices and Laws Study....240
Background....240
Licensure of Auctioneers 240
Other North Dakota Laws and Rules Applicable to Auctioneers....240
Testimony and Committee Considerations....240
Auctioneer Licensing Requirements 240
Need for Additional Regulation of Auctioneers....241
Conclusion 242
Uniform Laws Review....242
Racing Commission Report 242
Lottery Report....243
Technical Corrections - Recommendation 243
Miscellaneous....243

Legislative Audit and Fiscal Review
Guidelines for Audits of State Agencies....244
Audit of the State Auditor's Office 245
Comprehensive Annual Financial Report....245
North Dakota University System Annual Financial Report 245
Performance Audits and Evaluations....245
University of North Dakota School of Medicine and Health Sciences 245
Administrative Committee on Veterans Affairs and Department of Veterans Affairs Performance Audit Followup....246
Wildlife Services Program 246
Department of Corrections and Rehabilitation Performance Audit Followup....247
Workforce Safety and Insurance Performance Audit Followup....247
Workforce Safety and Insurance Performance Evaluation....248
Department of Emergency Services and Collection and Use of 911 Fees Performance Audit Followup....248
Information Technology Audits 248
North Dakota Network and Security Audit 248
Information Technology Department Information System Audit....249
Other Reports....249
Department of Human Services Accounts Receivable Writeoffs....249
Racing Commission 249
Other Information....249
Audit Reports Accepted by the Legislative Audit and Fiscal Review Committee During the 2007-08 Interim....250

Legislative Management

Legislative Space Renovation Projects 252
Legislative Committee Meeting Room Renovations 252
Medora and Great Plains Rooms 252
Committee Room Tables 252
Medora Room Table Arrangement 253
Red River Room Table Arrangement 253
Sakakawea Room Table Arrangement 253
Lewis and Clark Room Table Arrangement 253
Missouri River Room Table Arrangement 253
Peace Garden Room Table Arrangement 253
Fort Union Room Table Arrangement 253
Fort Lincoln Room Table Arrangement 253
House Conference Room Table 253
Committee Room Carpeting 253
Committee Room Audio, Scheduling, and Video Presentation Systems 254
Capitol Tower Stairway Fire Exits 254
House Brass Rail 254
Legislative Space Use 254
Legislative Chambers and Memorial Hall 254
Legislative Committee Rooms 255
Legislative Rules 255
Motions During Debate 255
Bill Introduction Deadlines 255
Monday Introduction Deadlines 255
Health Mandate Introduction Deadlines 255
Constitutional Revision Committee Members 255
Consideration of Majority and Minority Reports 256
Delivery of Veto Messages 256
Crossover Deadline 256
Media Representative Identification 256
Other Rules Proposals Considered 256
Legislative Staffing Needs Study 256
Conclusion 257
Legislative Technology Applications Replacement Project 257
Background 257
Infrastructure Analysis 257
2005-06 Activity 258
Funds 258
Project Plan 258
Steering Group 258
Vendor Selection 258
Phase I of the Project 258
Phase II of the Project - Catalyst Initiative 259
2007-08 Interim - Phase II of the Project 259
Bill Format 259
Progress During the Interim 259
Legislators' Notebook Computers 259
Legislative Information Services 260
Bills, Resolutions, and Journals Subscription 260
Bill Status Report Subscription 260
Committee Hearing Schedules and Daily Calendars Subscription 260
Bill and Journal Room Photocopy Policy 261
Contracts for Printing Legislative Documents 261
Background 261
Contract Contents 261
Session Arrangements 261
Floor Session Video Coverage 261

Incoming WATS Line Service....261
Legislator Wellness Program....261
Legislator Expense Reimbursement Policy....262
Legislators' Supplies....262
Stationery....262
Brief Bags....262
Capitol Access Cards....262
Legislator Photo Identification Cards....262
Legislator Photographs....262
Legislator Computer Training....263
Personal Computer Use Policy....263
Journal Distribution Policy....263
Session Employment Coordinators....263
Session Employee Positions....263
Session Employee Compensation....263
Session Employee Orientation and Training....264
Secretarial, Telephone Message, and Bill and Journal Room Services....264
Secretarial Services....264
Telephone Message Services....264
Bill and Journal Room Services....265
Consolidated Services....265
Legislative Internship Program....265
Legislative Tour Guide Program....265
Doctor of the Day Program....266
Chaplaincy Program....266
Organizational Session Agenda....266
State of the State Address....266
State of the Judiciary Address....266
Tribal-State Relationship Message....266
Legislative Compensation Commission Report....266
Agricultural Commodity Promotion Groups Report....266
Agriculture Commissioner Report....267
Commissioner of Commerce Report....267
Legislative Ethics Committee....267
Telephone Usage Guidelines....267
Miscellaneous Matters....267
2010 Census Data Project....267
Brass Refinishing of Ground Floor West Hallway and Doors....267

Long-Term Care

Long-Term Care Study....268
Background Information....268
Previous Studies....268
Real Choice Systems Change Grant....268
Health Care Trust Fund/Long-Term Care Facility Loan Fund....268
Continuum of Care Services for the Elderly....269
Nursing Facility Payment System....269
Nursing Care and Basic Care Bed Moratorium....270
Capacity and Geographic Boundaries for Determining Capacity....270
Home and Community-Based Services....270
Identifying Areas of the State Needing Additional Nursing Home Beds....271
Access....272
Workforce....273
Reimbursement and Payment Incentives....273
Other Testimony and Reports....274
Long-Term Care Insurance Partnership Program....274
Notice of Transfer or Discharge....274
Legal Representation of Financially Exploited Elderly....274

North Dakota Health Information Technology Steering Committee 274
Olmstead Commission.....275
Recommendations 275
Dementia-Related Services Study 275
Background Information 275
Previous Studies.....275
Issues Relating to Dementia 276
Dementia Services Available.....276
Skilled Nursing Facilities.....276
Assisted Living/Basic Care Facilities.....276
In-Home Care Providers/Adult Day Care Programs/Adult Foster Care/Medical Professionals/Support Groups/Care Consultation 276
Suggested Changes.....277
Recommendations 277
Transition to Independence Program Study.....277
Previous Studies 277
Service Needs of Transition-Aged Youth.....277
Current State Agency Programs Serving Youth 278
Department of Human Services 278
Department of Public Instruction 279
Department of Corrections and Rehabilitation.....279
Department of Career and Technical Education 279
Collaborative Efforts 279
Private Programs.....280
Suggested Program Enhancements to Serve Transition-Aged Youth 280
Recommendations 281
Other Responsibilities.....281
State Department of Health Life Safety Survey Demonstration Project Report.....281
Background.....281
Report.....282
Recommendations 282
State Department of Health Basic Care Survey Process Report 282
Recommendations 283

Natural Resources

Severance of Hunting Access From Surface Estate Study 284
Background.....284
Testimony and Committee Activities 285
Recommendation.....285
One-Call Excavation Notice System Civil Penalty Study.....285
Background.....285
North Dakota One-Call Excavation Notice System 285
South Dakota.....286
Minnesota.....286
Montana 287
Testimony and Committee Activities 287
Committee Considerations 287
Conclusion 287
Missouri River and *Master Manual* Review Study 287
Missouri River 288
Water Project Funding 288
Federal Funding for Water Development 288
State Funding for Water Development.....289
Municipal, Rural, and Industrial Water Supply Program 289
Resources Trust Fund 289
Water Development Trust Fund.....289
Bonds 289
Drinking Water State Revolving Loan Fund 290

Master Manual 290
Testimony and Committee Activities 290
Conclusion 291
Garrison Diversion Project and Red River Valley Water Supply Project....291
Hunter Safety Education Report 292
Tile Drainage Report 292
Recommendation....293
State Water Commission Operation and Procedures Review 293
Indemnification Issue 293
Red River Valley Water Supply Project Bonds....294
Red River Basin Mapping Initiative 294

Public Safety
Study of Emergency Medical Services....295
Background Information 295
Emergency Medical Services....295
Emergency Medical Services Licensing....295
Emergency Medical Services Training and Certification 296
Emergency Medical Services Funding Sources 296
Quick Response Units 296
North Dakota Trauma System 296
Emergency Services Personnel 297
Law Enforcement Personnel 297
Emergency Medical Services Operations Grant Program 297
Study of Minimum Requirements of Reasonable Emergency Medical Services Coverage 298
Evaluation of the State's Trauma System....299
Assessment of the State's Emergency Medical Services System....302
North Dakota EMS Association 304
Committee Recommendations 304
Study of the Department of Emergency Services 305
Background Information 305
Division of Homeland Security 305
Duties and Responsibilities....305
Homeland Security Funding....306
Division of State Radio....306
Performance Audits 307
Mobile Data Terminal Services 307
Law Enforcement Telecommunications System Services 307
911 Services....307
City and County Fees for 911 Services 308
Next Generation 911....308
Task Force on Emergency Services....308
Committee Considerations....309
Committee Recommendations 310
Delivery and Funding of Veterans' Services Study 311
Previous Legislative Council Studies....311
1993-94 Budget Committee on Home and Community Care 311
2001-02 Budget Committee on Government Administration 311
North Dakota Veterans' Benefits 311
Administrative Committee on Veterans Affairs 313
Department of Veterans Affairs 314
Veterans Home 314
County Veterans' Service Officers....314
Performance Audits....315
Committee Findings and Observations....315
Committee Recommendations 315
Agreements Between North Dakota and South Dakota 316

Taxation

Property Tax Reform and Relief Study 317
Background....317
Senate Bill No. 2032 317
Property Taxes 317
Income Taxes 317
Funding 318
Property Tax Determination and Collection 318
Determination of Mill Rate 318
Local Assessment 318
Central Assessment 319
Property Tax Statistics and Political Subdivision Revenues 319
Home Rule Sales Taxes 319
Special Assessments 319
Committee Consideration 320
Conclusion 321
Oil and Gas Tax Allocation Study 321
Background....321
Oil Extraction Tax Allocation 321
Oil and Gas Gross Production Tax Allocation History 321
Special Provisions Affecting State General Fund Allocation of Oil and Gas Tax Revenues 322
Energy Development Impact Grant History 322
Committee Consideration 323
Recommendation 323
Income Tax Study....323
Background....323
Recent Changes 324
Committee Consideration 325
Conclusion 325
Political Subdivision Efficiency Study....325
Background....325
Committee Consideration 326
Conclusion 326
Soil Survey Implementation for Agricultural Assessments 326
Background....326
Committee Consideration 326
Recommendation 326

Transportation

Highway Funding and Transportation Infrastructure Needs Study 327
2005-06 Interim Committee Study and Activities 327
2007 Legislation 328
State Matching Sources 328
Testimony and Discussion 329
Upper Great Plains Transportation Institute Project....329
Department of Transportation Updates 329
Revenue 329
Conditions of Highways and Bridges 330
Transit Funding and Programs 331
REAL ID Act 331
Other Issues 331
Exemption From Federal Motor Carrier Safety Regulations Study....332
Legislative History 332
State Law 333
2007 Legislation 333
Federal Exemptions in General 333

Specific Exemptions 334
Medical Qualifications 334
Hours of Service 334
Knowledge and Skills Testing 334
Commercial Licensure 334
Testimony and Discussion 335
Railroad Risk Assessments, Hazardous Cargo, and Responses to Emergencies 336
Legislative History 336
Related Federal Regulation 336
Recent Changes in Federal Law 336
Testimony and Discussion 337
Highway Construction Positions Report 338

Tribal and State Relations
Federal Indian Law and Policy 339
State-Tribal Relations 340
State-Tribal Cooperative Agreements 340
2007 Legislation 341
Economic Development Initiatives in Indian Country 342
Taxation in Indian Country 343
Committee Considerations 344
Recommendation 344
Transportation in Indian Country 344
Committee Considerations 344
Recommendation 344
Tribal-State Natural Resources Issues 344
Child Support Enforcement in Indian Country 345
Indian Case Management, Social Services, and Health Issues 345
Committee Considerations 346
Recommendation 346
Northern Plains Initiative 346
Elementary and Secondary Education in Indian Country 347
Committee Considerations 347
Recommendation 347
Higher Education in Indian Country 347
Committee Considerations 348
Recommendation 348
Indian Affairs Commission 348
Recommendation 348
Tribal and State Relations Committee 348
Recommendation 348
Tribal Flag Display in Legislative Wing 348
Recommendation 349
Oil and Gas Tax Agreement 349

Workers' Compensation Review
Background 350
General Background 350
2007-08 Interim 350
Review Procedure 350
Claims Reviewed 351
First Claim 351
Claim Summary 351
Issues for Review 352
Workforce Safety and Insurance Response 352
Comments by Interested Persons 352
Second Claim 353
Claim Summary 353

Issues for Review 353
Workforce Safety and Insurance Response 353
Comments by Interested Persons 354
Third Claim 354
Claim Summary 354
Issues for Review 355
Workforce Safety and Insurance Response 355
Fourth Claim 355
Claim Summary 355
Issues for Review 356
Workforce Safety and Insurance Response 356
Fifth Claim 357
Claim Summary 357
Issues for Review 357
Workforce Safety and Insurance Response 357
Comments by Interested Persons 357
Sixth Claim 357
Claim Summary 357
Issues for Review 357
Workforce Safety and Insurance Response 358
Comments by Interested Persons 358
Seventh Claim 358
Claim Summary 358
Issues for Review 359
Workforce Safety and Insurance Response 359
Eighth Claim 359
Claim Summary 359
Issues for Review 360
Workforce Safety and Insurance Response 360
Comments by Interested Persons 360
Ninth Claim 360
Claim Summary 360
Issues for Review 360
Workforce Safety and Insurance Response 360
Tenth Claim 361
Claim Summary 361
Issues for Review 362
Workforce Safety and Insurance Response 362
Comments by Interested Persons 363
Eleventh Claim 363
Claim Summary 363
Issues for Review 364
Workforce Safety and Insurance Response 364
Twelfth Claim 364
Claim Summary 364
Issues for Review 365
Workforce Safety and Insurance Response 365
Comments by Interested Persons 365
Thirteenth Claim 366
Claim Summary 366
Issues for Review 366
Workforce Safety and Insurance Response 366
Fourteenth Claim 366
Claim Summary 366
Issues for Review 367
Workforce Safety and Insurance Response 367

Fifteenth Claim 368
Claim Summary 368
Issues for Review 368
Workforce Safety and Insurance Response 369
Information Requested 369
Background Information 369
Continuing Jurisdiction Program 369
New Claims - Processing Timelines 369
Correspondence 370
Office of Independent Review 370
Vocational Rehabilitation and Return-to-Work Services 370
Permanent Partial Impairment 371
Committee Considerations 371
Office of Independent Review - Name Change 371
Continuation of Benefits Through Appeal 371
Legislative Council Study - Social Security Benefits 371
Recommendations 371
Firefighter and Law Enforcement Presumption 371
Mileage Reimbursement 371
Permanent Partial Impairment for Vision Injury 371
Independent Medical Examinations 371
Case Reviews 372
Artificial Members 372
Rehabilitation Services 372
Preexisting Conditions 372
Cost-of-Living Adjustment 372

Workforce
Reports 373
Statewide Longitudinal Data System Committee 373
Renaissance Zone 374
Target Industries 374
Business Incentives 374
Renaissance Zone Conference 374
Report 374
Testimony 374
Recommendations 374
Beginning Again North Dakota 375
Workforce System Study 375
Study Background 375
2003-04 Interim Economic Development Committee 375
2005-06 Interim Economic Development Committee 376
Other 2007-08 Interim Committees 377
Budget Section 377
Education Committee 377
Higher Education Committee 377
Human Services Committee 378
Industry, Business, and Labor Committee 378
Information Technology Committee 378
2007-08 Workforce Committee Activities 378
Participation in Focus Groups 379
Participation in Workforce Congress 379
Focus Group Activities 379
Workforce Congress Activities 380
Consultants' Report 380
Breakout Groups 381
Reports From Breakout Groups 381
Closing Remarks 381

Consultants' Report....381
Information Provided to Committee....383
Centers of Excellence....383
Governor's Workforce Summit....383
Southeast Quadrant....383
Joint Meeting....384
Higher Education....385
Local Developers....386
Consideration....386
Child Income Tax Credit Bill Draft....386
Recommendations....386
Retirement Issues....386
Department of Commerce - Students....386
Students and Graduates....386
Tax Credits for Automation and Innovation....386
Workforce System Study....387
Immigration Reform Resolution....387
Job Development Authority Study....387
Legislative Background....387
State Law....387
County Job Development Authorities....387
City Job Development Authorities....387
Legislative History....387
Testimony....388
Conclusion....388
Population Study....388
Population and Demographic Statistics....388
North Dakota....388
Population Initiatives....388
Great Plains Population Symposium Project....388
Saving North Dakota Roundtable....389
New Economy Initiative....389
Youth Initiative Committee and Initiated Statutory Measure No. 3....389
Testimony and Committee Considerations....389
Recommendations....389
North Dakota University System - Workforce Needs Study....389
Background....389
Strategic Planning....389
Long-Term Financing Plan and Resource Allocation Model....389
Performance and Accountability Report....390
CCbenefits, Inc., Services....391
Testimony and Committee Considerations....391
Recommendations....391

Study Directives Considered and Assignments Made by the Legislative Council for the 2007-08 Interim....392
Legislative Council Assignments....404
Study Measures Not Prioritized....405

2009 North Dakota Legislative Council Bill and Resolution Summaries
House....408
Senate....412

January 5, 2009

Honorable John Hoeven
Governor of North Dakota

Members, 61st Legislative
Assembly of North Dakota

I have the honor to transmit the Legislative Council's report and recommendations of 24 interim committees, the Advisory Commission on Intergovernmental Relations, and the Commission on Alternatives to Incarceration.

Major recommendations include providing a plan to remodel and expand the State Penitentiary; expanding the State Department of Health's emergency medical services (EMS) operations grant program to improve EMS in the state; creating an emergency response and recovery commission and fund to assist individuals, political subdivisions, and Indian tribes respond to and recover from emergencies or disasters; creating a dementia care services program; establishing a transition to independence program for young adults with mental illness; recodifying the laws pertaining to agricultural commissions, commodity assessments, and control of noxious weeds; mandating use of a parenting plan and establishing a parenting coordinator program to help resolve child custody and visitation disputes; limiting extraterritorial zoning authority; streamlining the transmission facility siting jurisdiction of the Public Service Commission; providing tax exemptions and reductions for various energy industries; increasing oil tax allocations to political subdivisions to offset oil development impact; providing tax credits for business automation and innovation; providing college tuition grants and earned income tax deductions to assist recent high school graduates and attract and retain recent college graduates; and expanding workers' compensation benefits to help injured employees receiving rehabilitation services.

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,

Representative Al Carlson
Chairman
North Dakota Legislative Council

AC/AL

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 primarily as a screening agency for proposed legislation submitted by state departments and organizations. This screening role is evidenced by the fact that as early as 1949, the LRC presented 100 proposals prepared or sponsored by the committee which the biennial report indicated were not all necessarily endorsed by the committee and included were several alternative or conflicting proposals.

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

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 studies contained in resolutions and bills 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 members appointed as provided 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 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, review audit reports for the Legislative Audit and Fiscal Review Committee, provide budget analysis, and assist the Legislative Assembly in developing the state's biennial budget. 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, organization of the state's higher education system, and the creation of the Commission on Legal Counsel for Indigents, 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 also subjects of 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 School of Medicine and Health Sciences 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. Since 1997, the Legislative Council has had the 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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SENATORS

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SUMMARY
BRIEFLY - THIS REPORT SAYS

ADMINISTRATIVE RULES COMMITTEE

The Council studied the exemptions for certain agencies from the Administrative Agencies Practice Act. The Council makes no recommendation for changes in the status of agencies exempt from the Administrative Agencies Practice Act.

The Council studied penalties for violation of occupational and professional laws and rules. The Council recommends House Bill No. 1024 to incorporate suggestions received from occupational and professional licensing boards or commissions to make statutory language specific as to the conduct that constitutes a violation under certain occupational and professional licensing laws.

The Council recommends Senate Bill No. 2026 to advance the filing deadline for agency rules by 15 days to allow more time for preparation and delivery of proposed rules to Administrative Rules Committee members before the rules are considered by the committee.

The Council reviewed all state administrative rulemaking actions from January 2007 through October 2008, covering 1,663 pages of rules. The Council voided one set of agency rules adopted by the Racing Commission. The Council agreed on rules amendments with the State Department of Health, State Lottery, State Board of Accountancy, and State Board of Nursing.

ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS

The Advisory Commission on Intergovernmental Relations exercised its statutory authority to serve as a forum for the discussion and 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; allocations of state and local resources; interstate issues involving local governments, including cooperation with the appropriate authorities of other states; and statutory changes required to implement commission recommendations.

The Council studied extraterritorial zoning authority, zoning of feedlot operations, increasing from four-tenths to five-tenths of one cent the amount of sales tax that is deposited in the state aid distribution fund, funding for rural township and county roads and bridges, exempting charitable property from taxation, replacing references to mills in the North Dakota Century Code with dollar amounts, and providing state's attorney services in counties without a resident state's attorney. In addition, the Council received a report on how each county has used the county's document preservation fund during the preceding two fiscal years.

The Council recommends Senate Bill No. 2027 to require joint jurisdiction of the city and the entity that otherwise would have had jurisdiction in the area of extended zoning jurisdiction of a city for any zoning change or subdivision plat approval or change in zoning or subdivision regulation. The bill identifies eight factors to be used by an administrative law judge when deciding any dispute.

AGRICULTURE COMMITTEE

The Council studied North Dakota Century Code provisions that relate to agriculture for the purposes of eliminating provisions that are irrelevant or duplicative, clarifying provisions that are inconsistent or unclear in their intent and direction, and rearranging provisions in a logical order. The Council recommends House Bill No. 1025 to rewrite the laws pertaining to the 12 agricultural commodity councils and commissions, and their respective assessments, House Bill No. 1026 to rewrite the laws pertaining to the control of noxious weeks, and House Concurrent Resolution No. 3001 to continue a Legislative Council study of North Dakota Century Code provisions relating to agriculture. The Council also received a report from the State Board of Agricultural Research and Education regarding its annual evaluation of research activities and expenditures.

BUDGET AND FINANCE COMMITTEE

The Council monitored the status of 2007-09 biennium revenues and expenditures, received information on deferred maintenance relating to state facilities and other infrastructure, reviewed budget forms and guidelines, received input from industry and academic representatives on the state's economy, received the July 2008 revised general fund revenue forecast, reviewed preliminary information on 2009-11 biennium estimated revenues and appropriation requirements and requests, and identified key budget issues for the 2009 legislative session.

The Council recommends House Bill No. 1027 to allow the Budget Section, based on a recommendation of the Emergency Commission, to authorize state agencies to hire full-time equivalent positions in addition to those authorized by the Legislative Assembly.

BUDGET SECTION

The Council received reports from the Office of Management and Budget on the status of the general fund and the permanent oil tax trust fund, tobacco settlement proceeds, irregularities in the fiscal practices of the state, the status of the risk management workers' compensation program, and 2009-11 biennium budget form changes. The Budget Section directed the Office of Management and Budget to prepare appropriation bills for the 2009 legislative session to include the base level funding, adjustments or enhancements, and the appropriation for each agency in a single section using a three-column format; the number of full-time equivalent positions in total for each agency; and a separate line

item for deferred maintenance funding. The Budget Section also directed each agency to maintain detailed records of amounts spent from this line item for deferred maintenance and for any extraordinary repairs or other purposes.

The Council received a report from the North Dakota University System regarding sources of local funds received for construction projects of entities under the State Board of Higher Education. The Council authorized the expenditure of additional other funds for capital projects, as well as changes in the scope of capital projects at Bismarck State College, Dickinson State University, North Dakota State University, Minot State University, State College of Science, University of North Dakota, and Williston State College.

The Council received annual reports and a loan request for the purchase of computer hardware and software to host the Department of Human Services Medicaid management information system applications from the Information Technology Department. The Council received reports from Job Service North Dakota on the status of the job insurance trust fund; the State Board of Agricultural Research and Education on the status of the board; the Public Service Commission on the status of a facility use agreement between the Public Service Commission and the Facility Management Division, Office of Management and Budget; and the Department of Agriculture on the status of the state meat inspection program and the endangered species program.

The Council received reports from the Department of Human Services on transfers the department made between line items and between subdivisions in excess of $50,000, the status of the Medicaid management information system project, enhancement of county eligibility systems, and on the status of Medicaid provider payments.

The Council received reports from the Department of Commerce on the annual audits of renaissance fund organizations and centers of excellence. The Council received reports from Workforce Safety and Insurance on the status of the State Auditor's office 2006 performance audit recommendations.

The Council received reports from the Department of Corrections and Rehabilitation on an inmate medical system and a space, operational, and staffing plan for the State Penitentiary and the James River Correctional Center. The Council received correspondence from the Correctional Facility Review Committee regarding a correctional facility concept recommendation to the Emergency Commission for informational purposes only and from a North Dakota ethanol plant receiving production incentives from the state.

The Council received reports from the State Fair Association on the status of planning for a new grandstand, the Attorney General's office on the status of the new Crime Laboratory building, and the Veterans Home on the status of the Veterans Home construction project.

The Council received reports from the Land Department on state agencies that have not submitted a claim for unclaimed property and approved a list of 21 agencies relinquishing their rights to recover the unclaimed property.

The Council approved 13 requests for centers of excellence funding awards which had prior approval of the Centers of Excellence Commission and the Emergency Commission. The Council approved two land acquisition requests of the Game and Fish Department and a change in the scope of a capital project at the State Hospital. The Council approved 33 agency 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 eight requests authorized by the Emergency Commission to obtain funds from the state contingencies appropriation.

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.

COMMISSION ON ALTERNATIVES TO INCARCERATION

The Council studied sentencing alternatives, mandatory sentences, treatment options, the expanded use of problem-solving courts, home monitoring, and other issues related to alternatives to incarceration.

The Council provided recommendations to the Governor for the Governor's consideration in preparation of the executive budget, including $500,000 for room and board expenses for individuals admitted to a faith-based program to address addiction problems, $500,000 for the Department of Corrections and Rehabilitation to be used by the department to provide matching grants for community service programs at a level to be determined by the department, $86,000 for the Cass County Justice and Mental Health Collaboration Project, and $126,576 for the Attorney General to provide for crisis intervention training for law enforcement officials. The Council expressed its support for a request by the Department of Human Services for expanded state funding for juvenile crisis intervention programs around the state.

The Council recommends Senate Bill No. 2028 to repeal the $50 community service supervision fee that courts are required to impose on participants in community service programs. The Council recommends Senate Bill No. 2029 to extend the existence of the commission until June 30, 2013.

The Council encouraged the Governor and the Department of Human Services to allow the Robinson Recovery Center to address treatment needs for addictions other than the treatment of methamphetamine addiction. The Council expressed its support for the efforts of the Department of Human Services and encouraged the department to provide broader residential treatment services for addictions and mental health issues on a statewide basis. The Council expressed its support for legislation during the 2009 legislative session to clarify the role of the county sheriff in supervision of electronic home monitoring in misdemeanor cases. The Council expressed its support for the 24/7 sobriety program initiated by the Attorney

General and the efforts of the Attorney General to work with the Department of Transportation to extend work permits for participants in the 24/7 sobriety program.

CORRECTIONAL FACILITY REVIEW COMMITTEE

The Council studied the immediate and future needs of the State Penitentiary, including a comprehensive review of the current State Penitentiary facility and the Missouri River Correctional Center. The Council recommends Senate Bill No. 2030 to provide an appropriation of $25 million from the general fund and $42 million from the State Penitentiary land fund to the Department of Corrections and Rehabilitation for completing Phase 1 of the renovation and expansion project at the State Penitentiary.

The Council received a report from the State Hospital regarding services provided by the Department of Corrections and Rehabilitation relating to individuals at the State Hospital who have been committed to the care and custody of the executive director of the Department of Human Services.

EDUCATION COMMITTEE

The Council studied ways in which schools and school districts can train teachers, counselors, and other school staff to better identify high-risk students and to provide programs designed to reduce the incidences of high-risk behaviors that can lead to suicide attempts; ways in which various public and private entities can cooperate with families to promote healthy lifestyles for children and create awareness about the interplay of healthy lifestyle choices and educational success; the short-term and long-term evolvement of regional education associations; and the appropriateness and adequacy of high school curricula, with respect to preparing students for higher education and for the workplace. The Council recommends House Bill No. 1028 to require that students take one unit of physical education and one-half unit of health education as a condition of high school graduation.

The Council also received periodic reports from the North Dakota Commission on Education Improvement and reports regarding the financial condition of schools, school district employee compensation, student scores on recent statewide tests of reading and mathematics, requests for and waivers of accreditation rules, requests for and waivers of statutory requirements governing instructional time for high school courses, the failure of any school board to meet the statutory threshold for increasing teacher compensation, the status of the statewide longitudinal data system plan, the planning and development of an electronic course delivery approval process, the operations of regional education associations, and the status of payments to individuals who hold national board certification.

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 sponsor. The Council received periodic reports from 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 Council studied employee benefits provided by state agencies which are not specifically authorized by law or if authorized by law are not consistent among agencies.

The Council recommends House Bill No. 1029 to provide general authority for state employee service awards and statutory governance for employer-paid tuition and employer-paid professional organization membership and service club dues.

The Council recommends House Bill No. 1030 to increase state employee performance bonuses from $1,000 in bonuses for a biennium to $1,000 in bonuses for a fiscal year and to authorize Human Resource Management Services to approve paid bonuses above the 25 percent limitation contained in North Dakota Century Code (NDCC) Section 54-06-30(4).

The Council recommends House Bill No. 1031 to define the term "hard-to-fill occupation" for purposes of the state employee recruitment and retention bonus program.

ENERGY DEVELOPMENT AND TRANSMISSION COMMITTEE

The Council studied the impact of a comprehensive energy policy for the state and the development of each facet of the energy industry, from the obtaining of the raw natural resources to the sale of the final product in this state, other states, and other countries, and the siting and decommissioning of commercial wind farms. The Council received reports from the North Dakota Transmission Authority, the North Dakota Pipeline Authority, the Energy Policy Commission (commonly referred to as the Empower North Dakota Commission), and the Emergency Services Communications Coordinating Committee.

The Council recommends three bills relating to wind power. The Council recommends Senate Bill No. 2031 to extend the reduction of taxable value from 3 percent to 1.5 percent of assessed value for a centrally assessed wind turbine electric generation unit with a nameplate generation capacity of 100 kilowatts or more from January 1, 2011, to January 1, 2015. The Council recommends Senate Bill No. 2032 to make permanent the sales and use tax exemption for materials used in the construction or expansion of a wind-powered facility. The Council recommends Senate Bill No. 2033 to extend the 15 percent income tax credit for the installation of geothermal, solar, wind, or biomass energy devices from an end date of January 1, 2011, to an end date of January 1, 2015; allow for a credit carryover of 10 years; and limit the sale of unused credits to the credits earned before January 1, 2011.

The Council recommends Senate Bill No. 2034 to extend the oil extraction tax exemption for tertiary recovery projects using carbon dioxide from 10 years

from the date of incremental production to an unlimited duration.

The Council recommends two bills related to beneficiated coal. The Council recommends Senate Bill No. 2035 to include a power plant that uses beneficiated coal within the sales and use tax exemption and include a severance tax exemption on coal purchased for coal beneficiation which is used in an agricultural commodity processing facility. The Council recommends Senate Bill No. 2036 to extend the coal conversion tax exemption for repowering to include an electrical energy generating unit that uses beneficiated coal. The exemption from the coal conversion tax is limited to electrical energy generating units instead of the current application to electrical generating plants.

The Council recommends Senate Bill No. 2037 to include within the sales and use tax exemption for the construction or expansion of a system used to compress, process, gather, or refine gas from an oil well, rather than only a gas well, and to provide for a certificate of qualification for the exemption from the Tax Commissioner.

The Council recommends two bills relating to the siting authority of the Public Service Commission. The Council recommends House Bill No. 1032 to exclude from the siting jurisdiction of the Public Service Commission construction conducted wholly within land for which a utility has previously obtained a certificate of site compatibility or a route permit from the commission and to exclude actions conducted wholly within land on which is located an energy conversion facility or transmission facility that was constructed before April 9, 1975. In addition, the bill excludes from the siting jurisdiction of the Public Service Commission pipelines with an inside diameter of four inches or less or a length of one mile or less or gathering pipelines as defined by federal law.

The Council recommends House Bill No. 1033 to reduce the time allowed for the Public Service Commission to designate the route for a transmission facility from six months to three months after receiving the application.

HIGHER EDUCATION COMMITTEE

The Council studied the means by which the North Dakota University System can further contribute to developing and attracting the human capital to meet North Dakota's economic and workforce needs, including ways to increase postsecondary access, improve the quality of education, contain costs, and other means, including productivity, to maximize the usage of the University System in meeting the human capital needs of the state.

The Council recommends Senate Bill No. 2038 to continue through June 30, 2011, the continuing appropriation of higher education institutions' special revenue funds; to continue through July 31, 2011, the authority for the University System to continue at the end of the biennium unspent general fund appropriations and the requirement that the budget request and appropriation of the University System include block grants for a base funding component, an initiative funding component, and an asset funding component; to provide for a Legislative Council study of higher education; and to provide legislative intent for performance and accountability measures to be included in the State Board of Higher Education performance and accountability report pursuant to NDCC Section 15-10-14.2.

The Council also studied the provision of services to children and adults who are deaf or hearing-impaired, including the role of the School for the Deaf in the provision of education and rehabilitative services, the short-term and long-term viability of existing state facilities, and alternative approaches that might enhance the scope and breadth of service availability.

The Council recommends House Bill No. 1034 to provide for a Legislative Council study of the provision of services to children and adults who are deaf or hearing-impaired and provides an appropriation for obtaining consulting services.

The Council received a report from the North Dakota University System regarding the status of the implementation of CCbenefits, Inc., services and recommendations relating to the use of CCbenefits, Inc., services.

HUMAN SERVICES COMMITTEE

The Council studied the temporary assistance for needy families program, including potential programs and services that could be funded with program funds; the success and effects of the laws enacted by the 55th Legislative Assembly in House Bill No. 1041 (1997) and Senate Bill No. 2052 (1997), known as the "swap proposal;" and infant development programs, including a review of service coordination and the funding structure.

The Council received reports from the Department of Human Services regarding enrollment statistics and costs associated with the children's health insurance program state plan, the status of medical assistance recipients' access to dental services, the status of the alternatives-to-abortion program, and the status of the transition assistance for the childcare program; from the Insurance Commissioner regarding a recommendation for an entity to contract with to provide analyses of legislative measures mandating health insurance coverage; from the State Department of Health's Immunization Task Force regarding the status of the immunization program transition; from the University of North Dakota College of Nursing regarding the Nursing Education Consortium; and from the Drug Use Review Board regarding the board's review of the utilization, cost, and effectiveness of certain drugs and the board's findings and recommendations.

INDUSTRY, BUSINESS, AND LABOR COMMITTEE

The Council reviewed Workforce Safety and Insurance (WSI) premiums, benefits, and accountability and transparency methods and the results of the consultant reviews of claims processing, human resources, and management areas. The Council recommends House Bill No. 1035 to provide that the level of financial reserves plus available surplus of WSI

may not exceed 150 percent of the actuarially established discounted reserve and to exclude from the calculation of available surplus any funds designated or obligated to specific programs or projects pursuant to a directive or specific approval by the Legislative Assembly. The Council recommends House Bill No. 1036 to require WSI to establish premium rates annually on an actuarial basis and to provide that the statewide average premium rate level may not deviate by more than 5 percentage points from the recommended actuarial-indicated premium level for that year. The Council recommends House Bill No. 1037 to require that the biennial independent performance evaluation of WSI address performance measurements, including a review of trends in workplace injuries; whether claims are being handled fairly and efficiently; whether claims or premium decisions have been subject to inappropriate political influence; whether safety and loss prevention programs are effective in reducing claims and the severity of claims; whether injured workers, employers, and service providers are satisfied with the services of the organization; whether litigation rates and the number of contested claims are appropriate as compared with other workers' compensation programs or systems; and whether premiums are appropriate and reserve levels are adequate. The Council recommends House Concurrent Resolution No. 3002 to provide for a Legislative Council study of the governance structure of WSI and to determine the feasibility and desirability of mutualization of WSI.

The Council studied the regulation and licensing of pharmacists in this state, including an examination of the State Board of Pharmacy, the board's size, the manner of board membership appointment, and whether the board is representative of commercial and noncommercial pharmacists; the state's demographics and the impact changing demographics in rural areas will have on the ability of small, locally owned pharmacies to remain economically viable and of rural residents to access low-cost pharmaceuticals and pharmacy and pharmacists' services; pharmacy ownership restrictions, the relevance of those restrictions in terms of marketplace competition, and the impact of those restrictions on the price and availability of pharmaceuticals and on pharmacy and pharmacists' services; and statutory interplay between the board and the North Dakota Pharmaceutical Association and whether the regulatory function of the board conflicts with the advocacy function of the association. The Council recommends Senate Bill No. 2039 to eliminate the statutory integration of the State Board of Pharmacy and the North Dakota Pharmaceutical Association, to add two members to the State Board of Pharmacy--a registered pharmacy technician and a public member, and to reduce the maximum amount the State Board of Pharmacy may charge for an annual pharmacist license from $200 to $100.

The Council studied wireless providers in the state and how wireless service impacts the business climate in the state. The Council recommends Senate Bill No. 2040 to provide a sales and use tax exemption for equipment used in telecommunications infrastructure development.

The Council studied the licensure, training, and classroom education requirements for electricians in this state; reciprocity agreements with other states and the effect of those agreements on standards in this state; and the effect of the licensure, training, classroom education requirements, and reciprocity agreements on the availability of qualified electricians in this state.

The Council studied the organization, powers, duties, and effectiveness of the Department of Commerce, including review of the legislative history leading to the creation of the department; review of the legislative and executive branch expectations in the creation of the department and whether those expectations are being met; evaluation of the effectiveness of the North Dakota Economic Development Foundation in providing a nonpartisan, private sector perspective to the department's approach to the department's duties; evaluation of the organizational structure of the department, including whether the department should include a division of science and technology; and evaluation of the strategic planning process of the department and its effectiveness.

The Council participated in the Department of Commerce Renaissance Zone Conference to review the list of projects in the state which have been undertaken under the renaissance zone program, evaluate whether the projects have positively impacted the renaissance zone communities, consider options for smaller communities to become involved in the renaissance zone program or a similar program, and make recommendations regarding how the program could be improved to further meet the needs of the state and local communities.

The Council received a report from the Insurance Commissioner on findings regarding insurers' use of modified community rating for health insurance or health benefits coverage policies; a report from WSI on recommendations based on the safety audit of Roughrider Industries work programs and the performance audit of the modified workers' compensation coverage program; and a report from the Commissioner of Financial Institutions on the outcome of the commissioner's study of how the state's building and loan association and mutual savings bank laws relate to conversions of state credit unions to building and loan associations or mutual savings banks.

INFORMATION TECHNOLOGY COMMITTEE

The Council received reports from the Chief Information Officer and representatives of the Information Technology Department regarding the prioritization of major computer software projects for the 2009-11 biennium; the department's business plan; the department's annual report; statewide information technology policies, standards, and guidelines; and major information technology projects. The Council also received reports from representatives of the North Dakota University System regarding higher education information technology planning, services, and major projects.

The Council recommends Senate Bill No. 2041 to expand the membership of the Criminal Justice Information Sharing Board and to provide that board members who are not state employees are entitled to compensation and expense reimbursement.

JUDICIAL PROCESS COMMITTEE

The Council studied issues of fairness, equity, and the best interests of children as they relate to issues of child custody and visitation. The scope of this study was limited to a study of the best state practices relating to child custody. The Council recommends Senate Bill No. 2042 to provide for changes in the terminology used in family law; to require that in any proceeding to establish or modify a judgment providing for parenting time with a child, a parenting plan would be required to be developed and filed with the court; to add several best interest factors; to clarify several current best interest factors; and to establish a parenting coordinator program. The Council also recommends House Bill No. 1038 to authorize the Department of Human Services to issue a restricted operator's license to an obligor or an individual who fails to comply with a subpoena which may be used only during that obligor's or individual's normal working hours.

The Council studied the current state exemptions for bankruptcy and the desirability of updating these exemptions, including determining whether the exemptions in the current form continue to serve the historical purposes of protecting debtors from creditors and providing debtors with the basic necessities of life, so that debtors will not be left destitute and public charges of the state. The Council recommends House Bill No. 1039 to clarify and revise several of the absolute exemptions, including family books, clothing and wearing apparel, and fuel; to clarify that certain exemptions are available only to the head of household; to increase and clarify the motor vehicle exemption; to allow an exemption for a house trailer or mobile home to be taken in lieu of the homestead exemption; for the purpose of claiming an account as exempt, to limit the time period within which an individual may contribute to a retirement account; to increase the additional exemption for head of a family from $5,000 to $7,500; to clarify the exemptions for pensions, annuity policies, and life insurance; and to increase or to eliminate the maximum amount of compensation that may be claimed as exempt on account of the debtor's right to receive or property that is traceable to wrongful death or personal bodily injury.

The Council studied the search for and identification of missing persons. The Council recommends House Bill No. 1040 to establish a procedure for the location and identification of missing persons.

The Council studied the statutes and institutional resources relating to the domestic violence protection order process, including criminal cases for alleged violation of protection orders. The Council encourages the courts to include clearer information in domestic violence protection orders, recommends that the judicial branch and the State Bar Association of North Dakota evaluate the language used in domestic violence protection orders, and recommends that information regarding the respondent's rights and responsibilities should be included in those orders.

The Council studied the feasibility and desirability of establishing a paternity registry. The Council makes no recommendation regarding the establishment of a paternity registry in the state.

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 the state. The Council also received a report from the director of the Commission on Legal Counsel for Indigents regarding pertinent data on the operation, needs, and cost of the indigent defense contract system and any established public defender offices.

JUDICIARY COMMITTEE

The Council studied the formation of a North Dakota gaming commission to regulate and control all forms of gaming in North Dakota. The Council recommends Senate Bill No. 2043 to provide that the Racing Commission is subject to the supervision and direction of the Attorney General.

The Council conducted a study of abstracters, title opinions, and title insurance, which included a review of the orderly and efficient transfer of real property which provides adequate assurances of title. The Council makes no recommendation regarding the abstracters, title opinions, and title insurance study.

The Council studied the feasibility and desirability of establishing a statewide automated victim information and notification (SAVIN) system to provide information and notify registered victims regarding the status of an offender. The Council recommends House Bill No. 1041 to change the current victim notification laws to require the victim and other concerned citizens to register with the SAVIN system to receive their victim notifications and to provide that some of the notification duties that are currently the responsibility of certain entities, including prosecuting attorneys, courts, or custodial authorities, would be automated under the SAVIN system.

The Council studied crime victim compensation funding. The Council recommends that in 2009 the Legislative Assembly provide $550,000 in additional funding to adequately fund the Department of Corrections and Rehabilitation's crime victim compensation program.

The Council studied the practices and laws relating to the sale of real estate by auctioneers, including a review of the sale of multiple parcels of property at a single sale. The Council makes no recommendation as a result of the study.

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

The Council received a report from the director of the Racing Commission and a report from the director of the North Dakota Lottery regarding the operation of the lottery.

The Council recommends House Bill No. 1042 to make technical corrections throughout the North Dakota Century Code.

The Council received testimony and reviewed state and federal laws regarding the possession of firearms by individuals who have been convicted of certain offenses. The Council makes no recommendation regarding this issue.

LEGISLATIVE AUDIT AND FISCAL REVIEW COMMITTEE

The Council received and accepted 164 audit reports prepared by the State Auditor's office and public accounting firms. Among the audit reports accepted were seven performance audits and evaluations--University of North Dakota School of Medicine and Health Sciences, Wildlife Services program, Administrative Committee on Veterans Affairs and Department of Veterans Affairs followup report, Department of Corrections and Rehabilitation followup report, Workforce Safety and Insurance followup report, Workforce Safety and Insurance performance evaluation, and Department of Emergency Services and collection of 911 fees followup report.

The Council received information regarding Department of Human Services accounts receivable writeoffs, the National State Auditors Association peer review process, funds provided by the Racing Commission to supplement track purses, the Workforce Safety and Insurance annual report, the Department of Corrections and Rehabilitation educational and vocational programs, benefits of the GenTax integrated tax system, and the developmentally disabled facility loan program.

LEGISLATIVE MANAGEMENT COMMITTEE

The Council approved arrangements for the 2009 legislative session. The Council approved various committee room renovations, including removing the wall between the Medora and Great Plains Rooms, new committee room tables to be installed either before or after the legislative session, and new carpeting in most committee rooms.

The Council reviewed Council staff services for purposes of determining future legislative staffing needs, including the reorganized organization structure of staff services.

The Council approved new HP 8710p notebook-style computers for legislators.

The Council reviewed options for providing Capitol stairway fire exits from the north and south Capitol tower stairwells.

The Council recommends amendment of legislative rules to maintain Monday bill introduction deadlines and to maintain crossover on a Friday rather than a Thursday, in light of the Legislative Assembly convening in regular session on a Tuesday rather than a Wednesday in 2009; to require health mandate measures to be prefiled before the Legislative Assembly convenes; and to make changes reflecting legislative practices.

LONG-TERM CARE COMMITTEE

The Council studied the long-term care system in North Dakota, including capacity, geographical boundaries for determining capacity, the need for home and community-based services, a methodology to identify areas of the state needing additional nursing home beds, access, workforce, reimbursement, and payment incentives. The Council recommends Senate Bill No. 2044 to extend the moratorium on the state's licensed basic care bed capacity and the state's licensed nursing facility bed capacity from July 31, 2009, to July 31, 2013, and Senate Bill No. 2045 to require at least a 30-day written advance notice of any transfer or discharge from a nursing home, swing-bed hospital, basic care, or assisted living facility.

The Council studied the availability and future need for dementia-related services, as well as funding for programs for individuals with dementias. The Council recommends House Bill No. 1043 to direct the Department of Human Services to contract for a dementia care services program in each area of the state served by a regional human service center to provide personalized care consultation services, training, and education regarding dementia; to provide a $1.2 million general fund appropriation for the program; and to provide for a report to the Legislative Council regarding the outcomes of the program.

The Council studied the feasibility and desirability of establishing a transition to independence program for young adults with mental illness. The Council recommends House Bill No. 1044 to provide that the Department of Human Services develop or contract for a program for services to transition-aged youth at risk and to provide a $700,000 general fund appropriation.

The Council received a report from the State Department of Health regarding the status of the department's demonstration project involving life safety surveys for basic care facilities and long-term care facilities during and at the conclusion of construction or renovation projects costing more than $3 million and whether the program should be made permanent. The Council recommends Senate Bill No. 2046 to require the State Department of Health to conduct surveys during construction or renovation projects of health facilities licensed by the State Department of Health.

The Council received a report from the State Department of Health regarding the impact of the implementation of the survey process for basic care facilities to identify and correct deficiencies.

NATURAL RESOURCES COMMITTEE

The Council studied the severance of hunting access from the surface estate.

The Council recommends House Bill No. 1045 to remove the July 31, 2009, expiration date from NDCC Section 47-05-17 and to provide that the prohibition on the severance of the right of access for hunting access does not apply to the private land habitat and access improvement program under Title 20.1.

The Council studied the feasibility and desirability of establishing legislation for the enforcement and

assessment of civil penalties for violation of the one-call excavation notice system.

The Council studied how the state might pursue additional uses of Lake Sakakawea and Missouri River waters for such beneficial purposes as domestic and industrial uses, recreation, fish and wildlife, and irrigation, and how the state, to enhance its use of lake and river, might promote congressional review of the Flood Control Act of 1944 and a reexamination by the Corps of Engineers of the way in which it manages the Missouri River system.

The Council authorized the chairman to send a letter to the chairman of the United States Senate Committee on Appropriations stating that the Natural Resources Committee, in concurrence with the chairman of the Legislative Council, supports Section 108 of S.3258, authorizing the Secretary of the Army to conduct a study of the projects located within the Missouri River Basin.

The Council received information concerning the Garrison Diversion Unit Project and the Red River Valley Water Supply Project.

The Council received a report from the Game and Fish Department regarding the department's findings and recommendations resulting from its study of hunter safety education requirements and hunter safety for all ages of hunters.

The Council received a report from the State Water Commission regarding the commission's findings and recommendations resulting from its assessment of the impact of tile drainage on the beneficial use of water by prior water appropriators.

The Council reviewed State Water Commission operations and procedures.

The Council received reports from the State Water Commission regarding implementation of 2007 S.L., ch. 559, authorizing the State Water Commission to provide $40 million of the nonfederal share of funds necessary to construct the Red River Valley Water Supply Project by issuing bonds not to exceed $40 million plus the cost of issuance of the bonds, capitalized interest, and reasonably required reserves.

The Council received reports on the development of the digital elevation models for the Red River Basin.

PUBLIC SAFETY COMMITTEE

The Council studied the state's emergency medical services (EMS) system and received reports from the State Department of Health regarding the outcome of the Health Council's study of minimum requirements of reasonable EMS coverage, the findings and recommendations of a contractor's evaluation of the state's trauma system, and the findings and recommendations of a contractor's assessment of the state's EMS system. The Council recommends:

- Senate Bill No. 2047 to provide a $128,400 general fund appropriation to the State Department of Health for providing emergency training grants to rural law enforcement officers and individuals choosing to become licensed first responders during the 2009-11 biennium.
- Senate Bill No. 2048 to provide for mandatory hospital participation in the state's trauma system and mandatory licensure of quick response units.
- Senate Bill No. 2049 to expand the EMS operations grant program, including an assessment of EMS operations, the provision of leadership training, and the development of an annual statewide EMS recruitment drive. The bill provides a $4,525,000 appropriation from the insurance tax distribution fund to the State Department of Health for the EMS operations grant program for the 2009-11 biennium.
- Senate Bill No. 2050 to amend the definition of EMS, provide that the Health Council's rules relating to the licensure of EMS operations may include response time standards, to amend provisions relating to property tax levies for EMS, and to provide that the State Department of Health may regulate the communications methods and protocols for EMS operations.

The Council studied the Department of Emergency Services, including a review of the allocation of federal homeland security funding, the operation of State Radio, and potential changes to the 911 fee structure to continue salary equity funding provided in the 2007-09 biennium. The Council recommends:

- House Bill No. 1046 to establish an emergency response and recovery fund to be used to assist individuals, political subdivisions, and Indian tribes in paying the costs of responding to and recovering from a disaster or emergency declared by the Governor which does not qualify for a presidential disaster declaration.
- House Bill No. 1047 to increase the per chemical fee for the hazardous chemicals preparedness and response program by $27, from $25 to $52 per year, and the maximum annual fee for a facility by $266, from $150 to $416. The bill provides that the fees collected are to be distributed one-third to the Department of Emergency Services, one-third to local emergency planning commissions, and one-third to the North Dakota Firefighters Association.
- House Bill No. 1048 to provide that the Department of Emergency Services prepare and distribute to political subdivisions guidelines and model intrastate mutual aid agreements to provide a system for mutual assistance among political subdivisions in the prevention of, response to, and recovery from a local disaster or emergency.
- House Bill No. 1049 to provide that the Peace Officer Standards and Training Board prescribe minimum certification standards and continuing education requirements for all special operations units that operate under the authority of local law enforcement agencies in the state.
- House Bill No. 1050 to provide a $7.2 million general fund appropriation to the Adjutant General for purchasing or leasing infrastructure and equipment for up to eight additional radio towers to expand coverage of the State Radio system during the 2009-11 biennium.

- House Bill No. 1051 to provide a $750,000 general fund appropriation to the Adjutant General for upgrading the Department of Emergency Services' mobile data system to high-speed broadband access during the 2009-11 biennium.
- House Bill No. 1052 to provide a $2 million general fund appropriation to the Adjutant General for completing Phase 2 of the Department of Emergency Services' computer-aided dispatch system during the 2009-11 biennium.
- House Bill No. 1053 to require each county to maintain an emergency management organization which serves the entire county or be a member of a regional emergency management organization that serves more than one county. The bill provides a $1.5 million general fund appropriation to the Adjutant General for providing grants to counties that merge emergency management efforts during the 2009-11 biennium.
- House Bill No. 1054 to provide that the Adjutant General study the effects of Next Generation 911 on the public safety answering points in the state and provide a $100,000 general fund appropriation to the Adjutant General for the 2009-11 biennium for conducting the study.
- House Bill No. 1055 to provide a $400,000 general fund appropriation to the Adjutant General for providing grants for regional cross-discipline and cross-jurisdictional training and exercising activities for fire departments, law enforcement, EMS, and public communications dispatchers for the 2009-11 biennium.
- House Bill No. 1056 to provide that the Adjutant General study the feasibility and desirability of establishing a multi-discipline emergency responder academy in the state and to provide a $100,000 general fund appropriation to the Adjutant General for the 2009-11 biennium for conducting the study.

The Council studied the delivery and funding of veterans' services by the state and counties. The Council recommends House Bill No. 1057 to require county veterans' service officers to maintain accreditation by the National Association of County Veterans Service Officers; to provide that the general supervision and governance of the Veterans Home is vested in a Veterans Home Governing Board, which consists of seven members appointed by the Governor; to provide that the commissioner of the Department of Veterans Affairs be appointed by the Governor; to require the Department of Veterans Affairs to be located in Bismarck or Mandan; to reduce the size of the Administrative Committee on Veterans Affairs from 15 individuals to 7 individuals with the commissioner of the Department of Veterans Affairs serving as the chairman of the committee; and to revise the powers and duties of the Administrative Committee on Veterans Affairs to remove the supervision of the Department of Veterans Affairs and the Veterans Home and to provide that the committee create and implement a strategic plan for the delivery of veterans' services.

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.

TAXATION COMMITTEE

The Council studied property tax reform and relief.

The Council studied oil and gas tax allocation. The Council recommends Senate Bill No. 2051 to eliminate statutory caps on oil and gas gross production tax allocations to counties and to eliminate the cap on allocations to the oil and gas impact grant fund.

The Council studied income taxes, with emphasis on the possibility of eliminating one of the two forms for filing individual income taxes.

The Council studied political subdivision efficiency as a means of reducing property taxes.

The Council monitored implementation of soil survey data in agricultural assessments. The Council recommends Senate Bill No. 2052 to extend the deadline from 2010 to 2012 for county implementation of soil survey use in agricultural assessments.

TRANSPORTATION COMMITTEE

The council studied highway funding and transportation infrastructure needs, including those needs resulting from energy and economic development in the state. The Council studied Federal Motor Carrier Safety Regulations and exemptions for interstate and intrastate transportation in relation to this state's law and exemptions. The Council studied risk assessments for railroad facilities, the handling of hazardous cargo by railroads, and the ability of railroads to respond to potential accidents and emergencies, including sabotage, terrorism, and other crimes, and whistleblower protection. In addition, the Council received a report from the Department of Transportation regarding any additional full-time equivalent positions hired for highway construction and maintenance in lieu of entering contracts for those purposes.

TRIBAL AND STATE RELATIONS COMMITTEE

The Council conducted joint meetings with the Native American Tribal Citizens' Task Force.

The Council studied economic development initiatives in Indian country; taxation in Indian country; transportation in Indian country; tribal-state natural resources issues; child support enforcement in Indian country; Indian case management, social services, and health issues; the Northern Plains Initiative; elementary and secondary education in Indian country; higher education in Indian country; the Indian Affairs Commission; and the display of tribal flags in the legislative wing.

The Council recommends Senate Bill No. 2053 to provide a sales and use tax exemption for purchases by an Indian tribe.

The Council recommends Senate Bill No. 2054 to remove the $25,000 limitation on Department of Transportation agreements with tribal governments.

The Council recommends House Concurrent Resolution No. 3003 to direct the Legislative Council to study the sustainability of tribal social service programs.

The Council recommends House Concurrent Resolution No. 3004 to direct the Legislative Council to study Indian education issues.

The Council recommends House Bill No. 1058 to revise the definition of nonbeneficiary student, to provide that grant applications include documentation of enrollment status, to increase the grant payments from $4,581 to $5,304 per nonbeneficiary student, and to provide a reporting requirement to the Budget Section of the Legislative Council and the Legislative Audit and Fiscal Review Committee for the financial assistance to tribal colleges program.

The Council recommends House Bill No. 1059 to update the tribal names for members of the Indian Affairs Commission, to make it a duty of the Indian Affairs Commission to assist and mobilize the support of state and federal agencies in assisting Indian individuals and groups in North Dakota mandatory, and to allow the commission to accept gifts, grants, donations, legacies, and devises from any source which are appropriated for the purposes of the commission.

The Council recommends House Bill No. 1060 to extend the Committee on Tribal and State Relations through July 31, 2011.

The Council recommends that the Council arrange for the display of flags from the state's five tribes in an appropriate place in the legislative wing of the State Capitol.

The Council received a report from the Governor describing the negotiations and terms of the agreement between the Governor and the Three Affiliated Tribes - Mandan, Hidatsa, and Arikara Nation relating to taxation and regulation of oil and gas exploration and production within the boundaries of the Fort Berthold Reservation.

WORKERS' COMPENSATION REVIEW COMMITTEE

The Council reviewed the workers' compensation cases of 15 injured employees to determine whether changes should be made to the state's workers' compensation laws.

The Council recommends Senate Bill No. 2055 to clarify the burden of proof under workers' compensation law that provides a presumption for firefighters and law enforcement officers. The bill provides the presumption that the impairment is work-related can be overcome by clear and convincing evidence the impairment is not work-related. Under existing law, the burden of overcoming the presumption is a showing by competent evidence that the impairment is not work-related.

The Council recommends Senate Bill No. 2056 to amend the workers' compensation calculation for medical travel mileage reimbursement to an injured employee so it uses actual mileage to compute the reimbursement instead of using city limit to city limit mileage to compute the reimbursement.

The Council recommends Senate Bill No. 2057 to provide a scheduled workers' compensation permanent partial impairment award for impairment of vision. The bill provides a graduated schedule for vision impairments beginning at 20/80 corrected visual acuity.

The Council recommends Senate Bill No. 2058 to provide a distinction between a Workforce Safety and Insurance independent medical examination, which contemplates an actual examination of an injured employee, and an independent record review, which contemplates a file review of an injured employee's medical records.

The Council recommends Senate Bill No. 2059 that would provide for Workforce Safety and Insurance to pay an injured employees' attorney's fees and costs for a case review. The bill would allow an injured employee who utilizes the services of the Office of Independent Review to be eligible for payment of $500 for attorney's fees and $150 for costs associated with an attorney consultation before an administrative hearing is held.

The Council recommends House Bill No. 1061 to expand the workers' compensation coverage of artificial members. The bill would extend the definition of "artificial members" to include a prescriptive device that is an aid for a natural part, organ, limb, or other part of the body if the damage to the prescriptive device is accompanied by an injury to the body.

The Council recommends House Bill No. 1062 to expand the workers' compensation rehabilitation awards by allowing Workforce Safety and Insurance to provide an additional 20 weeks of benefits for injured employees participating in retraining programs and to provide an additional two months of benefits while the injured employee is participating in work-search activities and to direct Workforce Safety and Insurance to implement a system of pilot programs to assess alternative methods of providing rehabilitation services.

The Council recommends House Bill No. 1063 to limit the circumstances under which Workforce Safety and Insurance may deny medical coverage or recoup medical payments.

The Council recommends House Bill No. 1064 to shorten to three years the period of time after which an injured employee receiving temporary total disability benefits or permanent total disability benefits qualifies for supplementary benefits and to shorten to three months the period of time an injured employee is required to be off wage-loss benefits before Workforce Safety and Insurance recalculates benefits.

WORKFORCE COMMITTEE

The Council studied the state's system for addressing workforce needs through a workforce system initiative that included receipt of agency reports regarding implementation of workforce legislation enacted during the 2007 legislative session, participated in focus groups across the state, and participated in a workforce congress.

The Council studied job development authorities across the state to determine the economic impact created by the authorities, to examine funding mechanisms used by the authorities when expending

resources for economic development purposes, and to determine whether the authorities serve a viable purpose.

The Council studied possible methods of growing North Dakota's population and increasing the available workforce in the state.

The Council studied the means by which the North Dakota University System fulfills North Dakota's workforce needs.

The Council received a report from the Statewide Longitudinal Data System Committee on the status of the plan for a longitudinal data system, annual reports from the Division of Community Services on renaissance zone progress, a biennial report from the Commissioner of Commerce on the process used and factors considered by the commissioner in identifying target industries on which economic development efforts are focused and the special focus target industry, the compilation and summary of state grantor reports filed annually by the Department of Commerce and the reports of state agencies that award business incentives for the previous calendar year, a report from the Department of Commerce on the department's Renaissance Zone Conference activities and the department's recommendations resulting from the conference, and a report from the Department of Commerce on the implementation and successes and failures of the Beginning Again North Dakota pilot program and whether the program should be continued or continued and expanded.

The Council recommends Senate Bill No. 2060 to expand and modify the renaissance zone law to include tax incentives for repair or remodeling of utility infrastructure, to provide for transfers of historic preservation and renovation tax credits, and to delete the half-mile requirement for the three-block island.

The Council recommends Senate Bill No. 2061 to direct Human Resource Management Services to conduct a study of actions the state could take to retain state workers who are nearing retirement.

The Council recommends House Bill No. 1065 to provide funding for the Department of Commerce Operation Intern program and to direct the department to administer a program to market North Dakota higher education opportunities to out-of-state students.

The Council recommends Senate Bill No. 2062 to provide a phased-in college tuition grant program for qualified North Dakota high school graduates beginning with the high school graduating class of 2014 and to provide an earned income tax deduction for recent college graduates. The bill is designed so the income tax deduction is effective immediately and remains in effect until the opportunity grant program becomes effective.

The Council recommends House Bill No. 1066 to provide three types of tax credits for taxpayers that are primary sector businesses--a credit for purchases of manufacturing machinery and equipment for the purpose of automating manufacturing processes, a tax credit for qualified expenditures necessary for implementing lean manufacturing, and a tax credit for qualified research expenses.

The Council recommends Senate Concurrent Resolution No. 4002 to provide for a Legislative Council study of the state's workforce system, the feasibility and desirability of enacting legislation to address the issues identified in the 2007-08 interim Workforce Committee's consultant's report, and the implementation of workforce initiatives enacted by the 61st Legislative Assembly.

The Council recommends Senate Concurrent Resolution No. 4003 to express support for the development of a balanced national immigration policy and to urge Congress to work to develop an immigration policy that protects and preserves the safety and interests of the United States and its citizens while also recognizing the needs of businesses to have a stable and legal supply of workers.

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 or repeal 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.

In addition to its statutory duties, the Legislative Council assigned two studies to the committee. House Bill No. 1479 (2007) directed a study of the appropriateness of each agency exemption from the Administrative Agencies Practice Act (AAPA). Senate Bill No. 2060 (2007) directed a study of penalties imposed by law for violation of occupational and professional laws and rules.

Committee members were Senators Tom Fischer (Chairman), John M. Andrist, Layton W. Freborg, Jerry Klein, and Tracy Potter and Representatives Randy Boehning, Chuck Damschen, Duane L. DeKrey, David Drovdal, Mary Ekstrom, Rodney J. Froelich, Chris Griffin, Kim Koppelman, Jon Nelson, Louise Potter, Blair Thoreson, and Dwight Wrangham.

The committee submitted this report to the Legislative Council at the biennial meeting of the Council in November 2008. The Council accepted the report for submission to the 61st Legislative Assembly.

STUDY OF AGENCY EXEMPTIONS FROM THE ADMINISTRATIVE AGENCIES PRACTICE ACT

From 1941 until 1981, the AAPA defined administrative agency to include any entity having state-wide jurisdiction and authority to make any order, finding, determination, award, or assessment which has the force and effect of law and which by statute is subject to review in the courts of this state. During the 1979-80 interim, the Legislative Council's Administrative Rules Committee studied the definition of administrative agency and requested information from numerous boards and commissions about the status of rulemaking and court review of agency decisions. The committee recommended a bill to redefine administrative agency to include every administrative unit of the executive branch of state government, with a listing of agencies specifically exempted from the definition. The recommended legislation was enacted in 1981 and contained a list of 25 agencies excluded from the definition.

Since 1981 agencies have been added to or removed from the list of agencies exempted from the definition of administrative agency under NDCC Section 28-32-01. However, there has not been a comprehensive review of the rationale for each exemption.

Each agency having an exemption under the AAPA was invited to appear before the committee to address the following questions:

1. Whether the AAPA exemption for the agency is still appropriate to the functions of the agency, with a discussion of why or why not.
2. Whether the AAPA exemption for the agency has been the subject of a court case or opinion of the Attorney General, with an explanation of any case or opinion.
3. Whether the AAPA exemption for the agency relates primarily to rulemaking or adjudicative proceedings of the agency.
4. Whether the agency suggests any changes to the AAPA exemption for the agency.

None of the agencies interviewed recommended any change in the exemptions that apply to them. It appears committee members agreed that exemptions under current law are still appropriate for each agency that has an exemption.

Conclusion

The committee makes no recommendation regarding the study of agencies exempt from the AAPA.

OCCUPATIONAL AND PROFESSIONAL LAWS AND RULES VIOLATION PENALTIES STUDY

Senate Bill No. 2060 directs a Legislative Council study of laws providing criminal penalties for violation of the state's laws and administrative rules regulating occupations and professions. The bill requires the study to include consideration of whether it is the desired public policy of this state to have laws that create criminal penalties applicable to entire chapters of the North Dakota Century Code and rules contained in the North Dakota Administrative Code regulating occupations and professions.

The State Board of Plumbing introduced Senate Bill No. 2060 to increase meeting compensation for members of the board and to increase penalties for violation of plumbing laws, rules adopted by the board, or the State Plumbing Code. Before introduction of Senate Bill No. 2060, NDCC Section 43-18-24 provided that a violation of any provision of Chapter 43-18 or the State Plumbing Code is an infraction. The bill as

introduced by the State Board of Plumbing would have added the penalty to violation of rules adopted by the board as well as the plumbing laws and plumbing code and increased the penalty from an infraction to a Class B misdemeanor. During discussion of the penalty provision, members of the standing committees considering the bill expressed concern about the lack of specific statutory provisions for which a violation would be punishable and about adding rules adopted by the board and making them punishable under the proposed criminal penalty. Ultimately, the bill was enacted with specific statutory provisions listed for which a violation would be a Class B misdemeanor. References to rules adopted by the board and the State Plumbing Code were eliminated from the penalty provision. The study language was added to Senate Bill No. 2060 after a brief review of occupational and professional laws and rules and penalty provisions. The expressed hope was that an interim study would provide the opportunity to examine such provisions for uniformity and clarity and to determine whether penalties should apply to statutory provisions, rules provisions, or both.

The Administrative Rules Committee identified 44 separate occupational and professional licensing boards or commissions having statutory provisions for penalties for violations of law. Each of these boards or commissions was invited to review its statutory and rules provisions and to consider the following:

1. Whether penalty provisions under laws and rules administered by the board or commission could be more specific in terms of identifying prohibited behavior.
2. If rules violations are subject to penalties, whether it is appropriate to move the prohibition to statutory status by introducing legislation.
3. Whether the culpability standard for violations subject to penalties should be for intentional, reckless, willful, or negligent behavior or no culpability standard should be applied.
4. Whether the penalty provisions under laws and rules administered by the board or commission should be uniform with penalties that apply for other occupations and professions and, if not, what special circumstances exist to justify different penalties for the laws and rules that apply to this occupation or profession.

The committee received specific suggestions for statutory changes from 12 occupational and professional licensing boards or commissions.

Recommendation

The committee recommends House Bill No. 1024 to incorporate suggestions received from occupational and professional licensing boards or commissions to make statutory language specific as to the conduct that constitutes a violation under certain occupational and professional licensing laws.

ADMINISTRATIVE AGENCY RULES REVIEW

Administrative agencies are those state agencies authorized to adopt rules under the AAPA (NDCC Chapter 28-32). 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. Each rule adopted by an administrative agency must be filed with the Legislative Council office for publication in the North Dakota Administrative Code.

Under NDCC Section 54-35-02.6, it is the standing duty of the Administrative Rules 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. If so, the agency is requested to indicate whether the rules are mandated by federal law or to explain any options the agency had in adopting the rules.
3. A description of the rulemaking procedure followed in adopting the rules, e.g., the time and method of public notice and the extent of public hearings 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 any such 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 1,194 rules sections and 1,663 pages of rules that were changed from January 2007 through October 2008. The number of sections affected and the number of pages of rules were substantially fewer than the comparable numbers from the previous biennial period. Because of the change to publication of rules supplements on a quarterly basis, rules that would have been published in November and December 2006 were published in January 2007. 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
December 2004-October 2006	1,353
January 2007-October 2008	1,194

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
December 2004-October 2006	1,920
January 2007-October 2008	1,663

Rule Review Schedule

The following table illustrates the rule filing dates, deadlines for committee meetings, and effective dates of rules under NDCC Section 28-32-15:

Filing Date	Committee Meeting Deadline	Effective Date
August 16-November 15	December 15	January 1
November 16-February 15	March 15	April 1
February 16-May 15	June 15	July 1
May 16-August 15	September 15	October 1

During the interim, the committee found that when a substantial volume of rules is submitted at the filing deadline, a problem exists for the Legislative Council staff to process the rules and send them to committee members far enough in advance of the committee meeting to allow committee members to adequately review the rules proposals.

Recommendation

The committee recommends Senate Bill No. 2026 to advance the filing deadline for agency rules by 15 days to allow more time for preparation and delivery to committee members of proposed rules. This will allow sufficient time for delivery of proposed rules to committee members for adequate study before the meeting at which the rules will be considered. The change will not delay the effective date of rules.

COMMITTEE ACTION ON RULES REVIEWED

Repealing Obsolete Rules

Under NDCC Section 28-32-18.1, an agency may amend or repeal a rule without complying with the normal notice and hearing 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.

The committee agreed with the Labor Commissioner on repeal of an obsolete rule provision establishing a state minimum wage rate. The rule became obsolete when House Bill No. 1454 (2007) became effective on the effective date of an increase in the federal minimum wage.

The committee agreed with the Office of Administrative Hearings on repeal of an obsolete rule, superseded by Senate Bill No. 2265 (2007). The bill removed a requirement that in an adjudicative proceeding, a party must first show good cause by written petition and get written approval from the hearing officer before obtaining discovery from an administrative agency. The rule contained a corresponding requirement that became obsolete when the statutory provision was eliminated.

Voiding Rules

Under NDCC Section 28-32-18, the committee may void all or part of a rule if that rule is initially considered by the committee not later than the 15th day of the month before the date of the Administrative Code supplement in which the rule change appears. The committee may carry over consideration of voiding administrative rules for not more than one additional meeting. This allows the committee to act more deliberately in rules decisions and allows agencies additional time to provide information or 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 Legislative Council office 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.

Rules Carried Over or Amended by Committee Approval

The committee carried over consideration of rules of the Board of Dental Examiners providing fee increases attributed to significant increases in the budget of the board. After receiving further information from the board, the committee took no further action regarding the rules.

The committee carried over consideration of rules of the State Department of Health imposing fee increases for food and lodging facilities because of concerns that the increases were intended to fund inspection of tattoo and tanning facilities. The department provided further information indicating that the revenue from food and lodging facility fee increases would fund a new staff position and that staff position would be used for food and lodging facility inspections and approximately one-half of the time of the new staff position would be devoted to tattoo and tanning facility inspection. The committee took no further action regarding the rules change.

The committee agreed with the State Department of Health to eliminate a sentence from a proposed rule change relating to purchase of vaccines by the department to reduce the cost of vaccines for providers. The language was eliminated because during the time the rules change was pending, it was determined that the department was not able to purchase vaccines at any lower cost than private and public health care providers.

The committee carried over consideration of some of the rules provisions adopted by the State Lottery relating to definitions, authorization of raffles by the State Lottery, and reference to lottery promotions. The committee received further information from the Attorney General's office relating to the rules and agreed with the Attorney General's office and the Lottery Division to remove the word raffle from the games authorized to be conducted by the State Lottery.

The committee carried over consideration of rules adopted by the State Board of Accountancy relating to educational requirements for accounting students and compensation for members of the board. The committee agreed with the board on amendments retaining board member compensation daily limits and delaying changes in accounting educational requirements to avoid impacting students nearing graduation.

The committee carried over consideration of rules of the Office of Management and Budget Human Resource Management Services relating to the option of counties to opt-out of the state merit system by establishing their own merit systems. The rules established procedures for a county social service agency to establish a merit system and to be consistent with federal merit principles required by federal law. Representatives of Cass County took exception to the rules, primarily relating to "at will" or "for cause" status of county employees. Cass County requested an Attorney General's opinion, but the Attorney General declined to issue an opinion on the issue. The committee took no further action regarding the rules.

The committee agreed with the Board of Nursing on rules changes that the board decided were appropriate after the rules were submitted for publication. The changes were suggested by the board to clarify provisions relating to interstate compact compliance and interpretations used in other compact states.

At its final meeting before preparation of this report to the Legislative Council, the committee approved a motion to carry over consideration of Department of Mineral Resources Geological Survey rules to regulate in situ leach uranium mining. The motion to carry over consideration of the rules did not specify any particular concern other than committee members should have more time to review the large volume of comments received by or filed with the Geological Survey regarding the rules. The committee will reconsider the rules at its meeting in December 2008.

Rules Voided by Committee

The committee voided rules adopted by the Racing Commission relating to use of the breeders' fund. The committee received a substantial amount of testimony in

opposition to the rules. House Bill No. 1324 (2007) prohibited transfer of money among funds administered by the Racing Commission. One of the sponsors of the legislation said the intent of the legislation was to prohibit using breeders' fund money for enhancing racing purses which would have been allowed by the rules. The committee also considered but did not approve two bill drafts to eliminate the Racing Commission and transfer its functions to the Attorney General and to require return of funds to the breeders' fund from the purse fund which had been paid out to enhance purses.

TABLE A

STATISTICAL SUMMARY OF RULEMAKING
January 2007 Through October 2008 Supplements 323 Through 330

Title	Supplement No.	Agency	Amend	Create	Supersede	Repeal	Special	Reserved	Total
3	08 APR 328	State Board of Accountancy	7	3		8			18
4	08 JUL 329	Office of Management and Budget	15	10					25
4.5	08 JAN 327	Board of Addiction Counseling Examiners	8			3			11
7	07 JAN 323	Agriculture Commissioner		10					10
10	08 APR 328	Attorney General	22	2					24
13	07 JAN 323	Department of Financial Institutions	15	48		13			76
	08 OCT 330	Department of Financial Institutions	2						2
17	08 JUL 329	State Board of Chiropractic Examiners	13	3					16
20	07 OCT 326	State Board of Dental Examiners	8			1			9
24	07 JAN 323	State Electrical Board	17						17
30	08 APR 328	Game and Fish Department	3	28		1			32
33	07 JAN 323	State Department of Health	19	4					23
	07 APR 324	State Department of Health	1						1
	08 JAN 327	State Department of Health	123	52		27	4		206
	08 JUL 329	State Department of Health	4						4
37	08 JUL 329	Department of Transportation	4	11					15
38	08 APR 328	Highway Patrol	14						14
43	08 JAN 327	Industrial Commission	19						19
	08 OCT 330	Industrial Commission	1	87					88
45	07 JAN 323	Insurance Commissioner		16					16
	08 JAN 327	Insurance Commissioner	29	18					47
46	08 OCT 330	Labor Department		11					11
48	07 JAN 323	State Board of Animal Health		16		26			42
54	07 APR 324	Board of Nursing		2					2
	08 JUL 329	Board of Nursing	46	14		2			62
56	08 JUL 329	State Board of Optometry	4						4
61	07 JUL 325	State Board of Pharmacy		3					3
	07 OCT 326	State Board of Pharmacy	3	1					4
66	07 APR 324	State Board of Psychologist Examiners	20						20
67	08 JAN 327	Department of Public Instruction	9			9			18
67.1	08 JUL 329	Education Standards and Practices Board	20	1					21
69	07 APR 324	Public Service Commission	6						6
	07 APR 325	Public Service Commission	1	1					2
	08 APR 328	Public Service Commission	1						1
	08 JUL 329	Public Service Commission	24	8		3			35
69.5	08 JAN 327	Racing Commission	57	4					61
70	08 APR 328	Real Estate Commission	8						8
71	08 APR 328	Public Employees Retirement System	24	1		1			26
72	08 APR 328	Secretary of State	1						1
74	07 JUL 325	State Seed Department	16	1					17
75	07 JUL 325	Department of Human Services	3	1					4
	08 APR 328	Department of Human Services	24	4					28
	08 JUL 329	Department of Human Services	1						1
	08 OCT 330	Department of Human Services	7						7
82	08 JUL 329	Board of Trustees of the Teachers' Fund for Retirement	7	1		1			9
86	08 APR 328	Department of Veterans Affairs	18			36			54
89	07 JAN 323	State Water Commission	2						2
	08 APR 328	State Water Commission	15	8					23
92	07 JUL 325	Workforce Safety and Insurance	2						2
	08 JAN 327	Workforce Safety and Insurance	10	5					15
93	07 JUL 325	Private Investigative and Security Board	2	1					3
96	08 JAN 327	Board of Clinical Laboratory Practice	1						1
97	07 JUL 325	Board of Counselor Examiners	1						1
101	08 JAN 327	Real Estate Appraiser Qualifications and Ethics Board	23	1		3			27
Sections affected			680	376	0	134	4	0	1,194
Grand total all sections									1,194

ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS

The Advisory Commission on Intergovernmental Relations occupies a unique status among committees with legislative membership. The commission differs from usual Legislative Council interim committees in its membership, its permanent status, and its statutory authority to determine its own study priorities.

The powers and duties of the commission are provided in North Dakota Century Code (NDCC) Section 54-35.2-02. Under this section, the commission is free to establish its own study agenda and to accept suggestions from groups or individuals for study.

In conjunction with NDCC Section 54-35.2-02(4), Section 54-40.3-03 provides that a political subdivision entering a joint powers agreement may file a copy of the agreement and the explanatory material with the commission to assist other political subdivisions in exploring cooperative arrangements.

The Legislative Council assigned to the commission the study provided by House Bill No. 1321 (2007) relating to a study of the extraterritorial zoning authority of cities and the impact of that authority on other political subdivisions. In addition, the Legislative Council delegated to the commission the responsibility to receive a report from the North Dakota Association of Counties before April 1 of each even-numbered year regarding how each county has used the county's document preservation fund during the preceding two fiscal years.

Under NDCC Section 54-35.2-01(1), the commission consists of 12 members:

- The Legislative Council appoints four members of the Legislative Assembly as members.
- The North Dakota League of Cities Executive Committee appoints two members.
- The North Dakota Association of Counties Executive Committee appoints two members.
- The North Dakota Township Officers Association Executive Board of Directors appoints one member.
- The North Dakota Recreation and Park Association Executive Board appoints one member.
- The North Dakota School Boards Association Board of Directors appoints one member.
- The Governor or the Governor's designee is a member.

The Legislative Council designates the chairman of the commission. All members of the commission serve a term of two years.

Commission members were Representatives Lee Kaldor (Chairman) and Dwight Wrangham; Senators Arden C. Anderson and Dwight Cook; North Dakota League of Cities representatives Linda Coates, who was replaced by Jim Gilmour and Greg Sund; North Dakota Association of Counties representatives Ron Krebsbach and Rodney Ness; North Dakota Township Officers Association representative Ken Yantes; North Dakota Recreation and Park Association representative Randy Bina; North Dakota School Boards Association representative Bev Nielson; and Governor's designee Brian D. Bitner.

The commission submitted this report to the Legislative Council at the biennial meeting of the Council in November 2008. The Council accepted the report for submission to the 61st Legislative Assembly.

2007-08 INTERIM AREAS OF STUDY

In addition to the study of the extraterritorial zoning authority of cities, the commission focused on six areas of interest.

1. Zoning of feedlot operations.
2. Increasing from four-tenths to five-tenths of one cent the amount of sales tax that is deposited in the state aid distribution fund.
3. Funding for rural township and county roads and bridges.
4. Exempting charitable property from taxation.
5. Replacing references to mills in the North Dakota Century Code with dollar amounts.
6. Providing state's attorney services in counties without a resident state's attorney.

EXTRATERRITORIAL ZONING AUTHORITY STUDY

Section 4 of House Bill No. 1321 (2007) directed the study of the extraterritorial zoning authority of cities and the impact of that authority on other political subdivisions. House Bill No. 1321, as introduced, would have reduced the extraterritorial zoning authority of a city to one-half mile for a city with a population of fewer than 25,000 and one mile for a city with a population of 25,000 or more. As enacted, the bill reduced the extraterritorial zoning authority of cities to:

1. One-half mile for a city with a population of fewer than 5,000.
2. One mile for a city with a population between 5,000 and 24,999.
3. Two miles if the city has a population of 25,000 or more.

This reduction was tempered by grandfathering any extraterritorial zoning regulation in effect before May 1, 2007, and sunsetting the reduction on July 31, 2009. In addition, the reductions in extraterritorial zoning authority did not apply if the extension is approved by at least five members of a six-member committee made up of three members appointed by the governing body of the city and three members appointed jointly by the governing bodies of any political subdivision that is exercising zoning authority within the territory to be extraterritorially zoned. The legislative history reveals that the study was added to the bill so that the issue of how far the extraterritorial zoning authority should reach and the procedure for applying extraterritorial zoning authority could be addressed while there is a moratorium on the extension of extraterritorial zoning authority.

There are four cities in North Dakota with a population of 25,000 or more--Bismarck, Fargo, Grand Forks, and Minot. Only Minot has not expanded its extraterritorial zoning authority to four miles. There are eight cities in North Dakota with a population between 5,000 and 24,999--Devils Lake, Dickinson, Jamestown, Mandan, Valley City, Wahpeton, West Fargo, and Williston. There are 345 cities in North Dakota with a population of fewer than 5,000.

The impetus for the moratorium and the study appears to come from the use of extraterritorial zoning authority by Grand Forks and Bismarck. The main concern of the owners of property over which the extraterritorial zoning jurisdiction was exercised in these instances was the lack of meaningful representation in the decision to exercise the jurisdiction.

History of Extraterritorial Zoning Authority

Extraterritorial zoning and subdivision authority was created by Senate Bill No. 2395 (1975). In that bill the application of a city's zoning regulations extended to:

1. Unincorporated territory located within one-half mile of a city having a population of fewer than 5,000.
2. Unincorporated territory within one mile of a city having a population between 5,000 and 24,999.
3. Unincorporated territory located within two miles of a city having a population of 25,000 or more.

Where there were two or more noncontiguous cities having boundaries at a distance where the boundaries would overlap, each city was authorized to control the zoning of the land on that city's side of the line established in proportion to the authority each city has to zone land outside its limits or pursuant to mutual agreement. The bill also provided for zoning commissions and planning commissions in cities and for extraterritorial subdivision regulation similar to the extraterritorial zoning authority.

In 1978 the North Dakota Supreme Court issued its only major decision relating to extraterritorial zoning authority. The case interpreted what the term "unincorporated territory" meant in the 1975 law. The court interpreted "unincorporated territory" to mean any territory not located within the boundaries of another incorporated city. The court rejected Apple Creek Township's interpretation that "unincorporated territory" means territory that is not part of a corporate public body. This case is used as authority for the proposition that a city may exercise exclusive zoning control over all territory within the extraterritorial zoning authority in spite of previous exercise of zoning authority by other political subdivisions.

Senate Bill No. 2084 (1981) addressed the issue of the zoning authority being bounded by a radial arc of a fixed distance from a city's corporate limits which inevitably resulted in single tracts of land being subject to zoning jurisdiction of more than one governmental entity. The bill applied a city's extraterritorial zoning authority to each quarter-quarter section of unincorporated territory, the majority of which is located within a specified distance of the city's corporate limits.

Senate Bill No. 2384 (1997) doubled the distance of extraterritorial zoning authority and extraterritorial subdivision regulation and provided for a procedure to solve disputes for overlapping areas of extraterritorial zoning or subdivision regulation. The legislative history reveals that this change was done to address the conflicts that had arisen between cities that are extremely close geographically, e.g., Fargo and West Fargo.

The bill authorized the governing bodies of cities that have boundaries at a distance where there is an overlap of extraterritorial zoning or subdivision regulation authority to enter an agreement regarding the extraterritorial zoning or subdivision authority of each city. A city exercising extraterritorial zoning authority must hold a zoning transition meeting if the area to be zoned is currently zoned. The purpose of the zoning transition meeting is to review the existing zoning rules and plan for an orderly transition.

Under the bill, if two or more cities have boundaries where there is an overlap of extraterritorial zoning authority, the governing bodies of the cities may enter an agreement regarding extraterritorial zoning. If a dispute arises concerning extraterritorial zoning which cannot be resolved, the dispute must be submitted to a committee for mediation made up of one member appointed by the Governor, one member of the governing body of each city, and one member of the planning commission of each city who resides outside the city limits. The Governor's appointee presides and acts as a mediator. If the mediation committee is unable to resolve the dispute, the cities may petition the Office of Administrative Hearings to appoint an administrative law judge. At the hearing before the administrative law judge, the Governor's appointee provides information to the administrative law judge on the dispute. Any resident or property owner or representative of the resident or property owner may appear at the hearing and present evidence. The decision of the administrative law judge is binding upon the cities involved in the dispute. The administrative law judge considers the following factors in making the decision:

1. The proportional extraterritorial zoning authority of the cities involved;
2. The proximity of the land in dispute to the corporate city limits of each city;
3. The proximity of the land in dispute to developed property in each city;
4. Whether any of the cities has already exercised extraterritorial zoning authority over the disputed land;
5. Whether natural boundaries are present;
6. The growth patterns of the cities involved; and
7. Other factors.

Senate Bill No. 2290 (1999) required a city exercising its extraterritorial zoning authority to hold a zoning transition meeting if the territory to be extraterritorially zoned is currently zoned. The bill required the city zoning or planning commission to provide at least 14 days' notice of the meeting to the zoning board or boards of all political subdivisions losing their partial zoning authority.

Since 1981 there have been a number of Attorney General's opinions interpreting NDCC Section 40-47-01.1. These opinions concluded a city's extraterritorial zoning authority preempts township zoning occurring within that same extraterritorial area; only a city may zone in the area affected by extraterritorial zoning authority, even if the city has not adopted zoning ordinances; the authority to license the retail sale of alcoholic beverages is granted to the county for all parts of the county outside the corporate limits of a city notwithstanding a city's extraterritorial police power jurisdiction granted by Section 40-06-01; and a city may apply and enforce its fire prevention code in unincorporated territory within the city's extraterritorial zoning authority to the extent the city has adopted the fire prevention code under its zoning authority and extended the application of the zoning regulations by ordinance.

Other Laws Relating to Extraterritorial Zoning Authority

Zoning in General

Besides dealing with extraterritorial zoning authority, NDCC Chapter 40-47 relates to zoning in general. In addition to the provisions specifically addressed, the chapter contains provisions for creating, amending, enforcement, and repeals of zoning regulations.

If a city has not exercised jurisdiction in areas surrounding the city, the county is the zoning authority unless the township has exercised its zoning authority. Under NDCC Section 40-47-01, the city may regulate the size of buildings, the size of lots and yards, the density of population, and the location of buildings based on the purpose of the buildings. This broad zoning regulation is limited by the provisions in state law relating to the State Building Code. In particular, Section 54-21.3-03 requires a governing body of the city, township, or county that elects to administer and enforce a building code to enforce the State Building Code. However, the State Building Code may be amended by these political subdivisions to conform to local needs.

Under NDCC Section 40-47-02, the city may divide the city into districts for purposes of zoning. All regulations must be uniform for each class or kind of buildings throughout each district, but the regulations in one district may differ from another. Section 40-47-03 requires that regulations adopted for zoning ordinances must be part of a comprehensive plan and must be designed to:

1. Lessen congestion in the streets.
2. Provide for emergency management.
3. Promote health and the general welfare.
4. Provide adequate light and air.
5. Prevent the overcrowding of land.
6. Avoid undue concentration of population.
7. Facilitate adequate provisions of transportation, water, sewage, schools, parks, and other public requirements.

Under NDCC Section 40-47-06, the governing body of the city may give its zoning authority to a zoning commission. If extraterritorial zoning authority is exercised, the zoning commission must be made up of at least one person residing outside the corporate limits of a city having a population of fewer than 5,000, two persons residing outside the corporate limits of a city having a population between 5,000 and 24,999, or three persons residing outside the corporate limits of a city having a population of 25,000 or more. The persons to be on the zoning commission from outside the corporate limits of the city are appointed by the board of county commissioners within the area in which the zoning authority is exercised and must reside within the area in which zoning regulation authority is exercised by the city.

Under NDCC Section 40-47-07, the city may provide for a board of adjustment to decide appeals from any determination made by an administrative official charged with enforcement of any ordinance. Chapter 40-47 provides procedures for the appeal to, the hearing by, and the effect of a determination by the board of adjustment. Every decision of the board of adjustment is subject to review by the governing body of the city and the decision of the governing body of the city is appealable to the district court.

Under NDCC Section 40-47-13, if regulations are made under Chapter 40-47 which impose higher standards than are required by any other statute or local ordinance, the regulations made under the authority in Chapter 40-47 govern and if any other statute or local ordinance imposes higher standards than are required by Chapter 40-47, the provisions of that statute or local ordinance govern.

Extraterritorial Subdivision Regulation

North Dakota Century Code Chapter 40-48 provides for any city to establish an official master plan of the municipality through a planning commission.

Similar to extraterritorial zoning regulation is the extraterritorial subdivision regulation provided under Section 40-48-18. A city may extend regulation of subdivisions to the same extent it may extend zoning authority. The same dispute mechanism for overlapping authority for extraterritorial zoning jurisdiction applies to extraterritorial subdivision regulation. Under Section 40-48-18.1, the planning commission or governing body may not require as a condition of approval of a request for approval of a plat, the execution of an agreement by the owner of the property stating that the owner will not oppose the annexation of the property by the municipality. There is an exception to this prohibition for property located within one-quarter mile of the municipality's city limits or if the agreement contains a provision requiring the municipality to provide municipal services before annexation.

Regional Planning and Zoning Commissions

Under NDCC Section 11-35-01, counties, cities, and organized townships may cooperate to form a regional planning and zoning commission. The regional commission may exercise any of the powers that are granted to the member counties, cities, or organized townships in matters of planning and zoning.

Annexation

A concept close to extraterritorial zoning authority is the annexation and exclusion of territory by cities under NDCC Chapter 40-51.2. As stated in Section 40-51.2-02, the purpose for an annexation is to:

1. Encourage natural and well-ordered development of municipalities.
2. Extend municipal government to areas that are part of the whole community.
3. Simplify government structure in urban areas.
4. Organize the interrelationship and inter-dependence between a city and the areas contiguous or adjacent to the city.

A city may annex property in any territory contiguous or adjacent to the city upon a written petition signed by not less than three-fourths of the qualified electors or by the owners of not less than three-fourths of the assessed value of property in the territory. However, a city may not annex land located within the extraterritorial zoning or subdivision regulation authority of another city unless the city has written consent from the other city or the annexation is ordered by an administrative law judge. If the land to be annexed lies within the extraterritorial zoning or subdivision regulation of another city and written consent to annex has not been received from the other city, the annexing city may submit the matter to a committee for mediation and to an administrative law judge if mediation does not resolve the matter.

North Dakota Century Code Section 40-51.2-07 allows the city to adopt a resolution to annex a contiguous or adjacent territory. This section requires the city to provide notice, especially to owners of real property who may file written protests. In the absence of protests filed by the owners of more than one-fourth of the territory proposed to be annexed, the territory in the resolution becomes part of the city. The annexation is effective for purposes of general taxation after the next January 31. Agricultural lands must remain agricultural lands until those lands are put to another use. If the owners of one-fourth or more of the territory proposed to be annexed protest, the city may submit the matter to a committee for mediation.

The mediation committee is made up of a member appointed by the Governor, representatives of the petitioners or protesters, the cities, counties, and townships involved, and any other parties. If the city is not satisfied with the mediation, the city may petition for a hearing by an administrative law judge. Under NDCC Section 40-51.2-12, at the hearing, any state or local governmental subdivision or planning or zoning commission or any resident of or person owning property proposed to be annexed may be heard at the hearing. Under Section 40-51.2-13, the administrative law judge must consider the following factors in coming to a decision:

1. The present uses and planned future uses or development of the area;
2. Whether the area sought to be annexed is part of the community of the annexing city;
3. The educational, recreational, civic, social, religious, industrial, commercial, or city facilities and services made available by or in the annexing city to any resident, business, industry, or employee of the business or industry located in the area;
4. Whether any governmental services or facilities of the annexing city are or can be made available to the area sought to be annexed;
5. The economic, physical, and social relationship of the inhabitants, businesses, or industries in the area sought to be annexed and the effect on other political subdivisions;
6. The economic impact of the proposed annexation on the property owners in the area of the proposed annexation and the economic impact if the area were not annexed;
7. Whether the area proposed to be annexed is within the extraterritorial zoning or subdivision regulation authority of another city; and
8. Any other factor.

Based upon those factors, the administrative law judge may order an annexation if the judge finds:

1. The area proposed to be annexed is now, or is about to become, urban in character;
2. City government in the area proposed to be annexed is required to protect public health, safety, and welfare; or
3. The annexation would be in the best interests of the area.

The decision of the administrative law judge is reviewable by a court under an abuse of discretion standard.

Testimony and Discussion

The commission received testimony concerning the use of extraterritorial zoning around the state, and the greatest amount of testimony concerned the three largest cities--Bismarck, Fargo, and Grand Forks. All three have extended extraterritorial zoning authority from two miles to four miles. Some issues related to all three cities and some issues were particular to each city. In Bismarck there was particular concern with the enforcement of zoning by the city, the effects of planning on property value, the effects on water districts, and the loss of permit fee income by the township. In Grand Forks there were issues related to the siting of a landfill and a density restriction. In Fargo there was particular concern with annexation and conflicts over territory with Horace.

The commission received testimony that extraterritorial zoning authority in other cities was working well. For example, West Fargo has extended its extraterritorial zoning authority to two miles. It was noted that there would be problems if the jurisdiction were for one mile; e.g., a developer wanted to place a 600-lot subdivision within 1.5 miles of the city and wanted to use septic systems. The subdivision would now be part of West Fargo, and the residents in the subdivision would have to pay three times more to be on city sewer and water than if there would not have been extraterritorial zoning and septic systems had been used. It was noted that coordination among city, township, and county officials works well and there is cooperation around West Fargo.

Representatives of the three largest cities exercising extraterritorial zoning testified concerning the need for planning and zoning for growth. It was pointed out that one of the primary considerations in planning should be to minimize the tax burden on current and future citizens. As a city grows, the land near the city becomes attractive to developers. Developers need to know where future infrastructure will be placed so that development may occur in an orderly manner. Landowners save money by developers building to connect with future infrastructure--water, sewer, and roads. It was noted that cities have the resources and expertise to properly plan and enforce zoning regulations--planning and zoning has to take in the large picture of water, storm water, livable spaces, services, open spaces, and transportation. It was noted a city plans for growth because the majority of citizens want good jobs, economic development, a place for businesses, and nice houses.

Residents in extraterritorial zoning areas, organized townships, and counties expressed concerns with the exercise of extraterritorial zoning authority. The main concern was that residents living in the extraterritorial zoning area of a city were unable to vote for the individuals in the city making decisions that concerned the residents' property. Testimony pointed out that the extraterritorial zoning power can be exercised at the discretion of the city and without recourse by those residents affected by the decision. It was noted that zoning is a power that is seldom questioned by the courts, and the only recourse against poor zoning is the ballot box. Before there was extraterritorial zoning, the organized township or the county acting as the board of township supervisors was the government with jurisdiction and an individual in that area could vote for the board of township supervisors or the board of county commissioners.

Testimony emphasized that current representation on the city planning and zoning board and provision for a transition meeting are not adequate and that cities regularly dismiss the concerns and recommendations of the previous jurisdiction in extending extraterritorial zoning jurisdiction.

Testimony noted that in addition to the city having the discretionary authority to exercise extraterritorial zoning jurisdiction, a city may extend zoning past where it is needed due to the arbitrary distance in law for extraterritorial zoning, instead of limiting the distance to the projected growth. Although the growth of a city can be predicted with accuracy, planning and zoning resources vary widely around the state and some counties and cities do not have professional planning staff. Although there may not be professional staff to make the projection, commission members discussed whether the governing body of a city could make a reasonable estimation.

When the Legislative Assembly allowed the increase from two miles to four miles for extraterritorial zoning in 1997, testimony indicated the increase was meant particularly for Fargo--the fastest growing city in the state. The commission was informed, however, that Fargo does not extend extraterritorial zoning to the maximum and matches the extension to growth potential. Fargo has the limited ability to grow, however, because of the Red River on the east, West Fargo on the west, and Horace to the south.

The commission was informed that a two-mile extraterritorial zoning authority would not be sufficient for Fargo. Testimony indicated that the population projection for Fargo in 50 years is 165,000 to 240,000. If this increase comes at 15,000 people per decade, it will require five sections of land per decade. In Fargo 10 years ago there were areas not in the extraterritorial zoning area that are now fully built. In Fargo it takes about 10 years to annex after adding an area through extraterritorial zoning authority. If the distance were reduced to two miles, then it would take less than 10 years before annexation. For comparison, Grand Forks has extended the extraterritorial zoning area to include areas in which it would take 115 years to develop. Bismarck has taken 50 years to grow three miles south and north and two miles east, but Bismarck has a four-mile extraterritorial area. Mandan has extended its authority to a point where the city will be after 550 years of growth.

The commission received testimony of the effect of extraterritorial zoning authority on landowners. It was noted that the law provides protection to property owners. City zoning protects landowners by prohibiting other landowners from doing things on their property that negatively affects neighbors. It was noted that city enforcement in some areas may be stricter than previous township enforcement. For example, Bismarck does not allow the use of former schoolbuses as calving shelters or the outdoor storage of parts vehicles, which rural landowners did previously.

Countervailing testimony indicated that city zoning adds cost to the landowner. In one instance, a landowner could not build a garage without the landowner having the property rezoned and having a new survey, subdivision plat, and storm water management plan.

The commission also received testimony planning alone can negatively impact landowners. In one instance, the future plan of a city planned for the landowner’s property to be used for industrial purposes. The effect was the landowner was "punished" for keeping the land agricultural instead of selling it for residential development before the city’s plan was developed. It was stated the decision of the city reduced the worth of the property by approximately 75 percent.

The commission received testimony on the effect of extraterritorial zoning authority on organized townships. It was stated that when Bismarck exercised its extraterritorial zoning authority over Apple Creek Township, the township lost approximately $71,000 in building permit fees. As a result, the township could not afford to pave roads. Commission members discussed whether building permit fees should be tied to the cost of the program rather than used as property tax relief.

The commission received testimony of the effect of extraterritorial zoning authority on rural water districts. The commission was informed that Bismarck stopped the rural water cooperative from providing water

because the city said it would provide the water that the city has not provided in 30 years. It was noted that in the Bismarck area, 20 percent of the revenue for the water district comes from within two miles of the city and 50 percent comes from within four miles of the city. Representatives of the water district testified the district cannot get financing for the area within Bismarck's extraterritorial zoning authority because lenders see that area as an area that potentially will be annexed.

The commission was informed of the effect of a density restriction in the extraterritorial area of Grand Forks on the rural water district. The density restriction limits the number of houses to four houses per 160 acres. It was noted that Grand Forks increased the minimum size of the lots when invoking extraterritorial zoning as opposed to making a maximum limit as is the case in most cities.

Testimony described how Grand Forks and the local water district agreed on a long-range plan, whereby the water district would provide water service just outside the extraterritorial zone. After that agreement was entered, Grand Forks limited development through density restrictions in the extraterritorial area and the water district could not recover the costs of the pipe. The water district had built over $500,000 in infrastructure improvements into the water service area.

The commission was informed of the effect of the extraterritorial zoning authority of the city of Grand Forks on the landfill siting process. Shortly after Grand Forks extended extraterritorial zoning authority from two miles to four miles, Grand Forks changed the zoning regulations in the extraterritorial area to authorize a landfill as a permitted use. When the city of Grand Forks authorized a landfill as a permitted use, a hearing was not needed to site a landfill. Grand Forks sited a landfill in the extraterritorial area in a township in which most of the citizens were against the siting of the landfill. The landfill is a regional facility for seven counties in North Dakota and Minnesota.

The commission was informed that Grand Forks needed a new landfill and could only site a landfill within the city's zoning jurisdiction. If the city did not site a new landfill, the city would have had to haul garbage to Gwinner at great cost. Within the city's zoning jurisdiction, there were very few places a landfill could be sited due to the airport, the amount of land needed, and water issues.

The commission received testimony that there should be legislation to allow people affected by a high-impact or high-pollution facility to have a hearing and for the decision to be made by a politically accountable board. Commission members discussed whether landfill siting should be a state decision because modern landfills serve a regional area larger than one political subdivision.

The commission received testimony that after zoning jurisdictions were expanded in 1997, Fargo and Horace entered an agreement on extraterritorial zoning jurisdiction which established the boundary. In 2006 Horace started a process to extend extraterritorial zoning jurisdiction beyond the boundary contrary to the agreement. In addition, Horace annexed land inside the boundary without the permission of the developer. Fargo became concerned that Horace would annex land that was within the extraterritorial zoning jurisdiction of Fargo. Two developers had acquired property for urban development and were concerned that Horace would try to annex property outside the boundary. The developers did not think Horace would be able to provide the proper infrastructure. It was noted that having land within the extraterritorial zoning authority of Fargo will increase the value of the property and Fargo will be the first city to be able to provide services. Fargo initiated annexation of the developers' property and strips of land to connect the properties along the border with Horace. These strip annexations were completed in 2006-07 and did not go into the extraterritorial zoning authority of Horace. The developers do not expect to develop the property for 20 years. The longest annexation was five miles from the existing city limits.

The commission received testimony in favor of limiting the extraterritorial zoning authority of cities. The most common limitation requested was to return the extraterritorial zoning authority to two miles for cities with four-mile jurisdiction. Because the boundary can always move as the city grows, it was argued that two miles was a long enough distance. Although the majority of testimony was in favor of limiting the extraterritorial zoning jurisdiction of cities, cities and some counties were in favor of the present extension, especially in areas in which there is rapid growth. It was argued that in these situations, the city is in the best position to understand and plan for the future needs of the city.

Testimony also favored limiting the extraterritorial zoning authority of cities by providing for the exercise of zoning authority by the board of county commissioners. It was noted the board of county commissioners is elected by and represents all the residents of the county and has access to professional staff. The commission was informed that Burleigh County uses Bismarck's city planning staff. The only difference is who has the final determination. Although in the Burleigh County, city of Bismarck case the same professional services would be used, and the residents in the extraterritorial area would be able to vote for the final decisionmaker--the board of county commissioners.

Testimony also suggested another limit--exercise of extraterritorial zoning jurisdiction by an organized township. It was argued that township government provides the best representation of the people in the township because it is the most local form of government for township residents.

The commission considered 12 bill drafts that would have limited extraterritorial zoning authority or activities within the extraterritorial zoning area. These bill drafts ranged from addressing a singular issue within extraterritorial zoning authority to the repeal of extraterritorial zoning authority.

Landfill Siting Hearing Bill Draft

The commission considered, but does not recommend, a bill draft that would have required a city zoning authority to hold a hearing on a particular landfill at a particular site. The bill draft addressed the situation

where a landfill is a permitted use, and hence, there is not a hearing.

Commission discussion noted that there is a hearing on the zoning change that allows for a landfill to be a permitted use. Even if there is a hearing, however, the hearing is by a body that is not voted for by the people most directly affected by the decision. It was suggested that a mandatory countywide election may be a more appropriate solution.

Density Restrictions Bill Draft

The commission considered, but does not recommend, a bill draft that would have prohibited density restrictions more stringent in the outside half of the extraterritorial zoning jurisdiction than in the inside half.

Commission discussion noted that the density restriction issue is a narrow issue that is addressed by other bill drafts that broadly address extraterritorial zoning authority. In addition, the bill draft prohibited more restrictive density requirements even if everyone agreed.

Board of County Commissioners Approval Bill Drafts

The commission received a proposal to strengthen the county role in extraterritorial zoning. Under the proposal, if a city wanted to change the extraterritorial zoning boundaries, the city would be required to submit an application to the county planning commission. After public notice, the county planning commission would have a hearing. The county planning commission would make a recommendation to the board of county commissioners. The board of county commissioners would have a hearing and accept, modify, or deny the planning commission's recommendation. The city would have to follow the decision of the county. A list of relevant factors was suggested to be considered by the board of county commissioners. These factors include:

- Present and projected population of subject area;
- Natural topography of the area;
- Present and projected transportation network;
- An analysis of whether necessary government services can best be provided through the proposed action or another type of boundary adjustment; and
- The degree of contiguity of boundaries of the subject area and adjacent units of government.

The commission considered, but does not recommend, a bill draft that would have required the board of county commissioners to hold a hearing on any regulation in the extraterritorial zoning authority area and approve or disapprove the regulation. Under the bill draft, the board of county commissioners could refer the matter first to the county planning commission for a recommendation.

The commission considered, but does not recommend, a second draft of the bill draft providing for the board of county commissioners to resolve zoning disputes in the extraterritorial zoning area. The major change in the second draft was to provide weight to a previous township determination. If there was a change from a previous township regulation, the board of county commissioners would need to find by a preponderance of evidence for the change desired by the city using the factors listed in the bill draft.

Opponents to the second draft testified that the bill draft created another level of zoning and did not provide recourse for a property owner when the city denies a property owner's request. In addition, there was testimony in favor of the township having zoning control rather than the board of county commissioners who are elected at large and underrepresent the rural areas in matters of extraterritorial zoning authority.

Commission discussion noted that the greatest concern with extraterritorial zoning was lack of the residents' right to vote and complicating zoning or creating more government to address that concern was needless.

Joint Jurisdiction - Dispute Resolution by Office of Administrative Hearings Bill Draft

The commission considered, but does not recommend, a bill draft that would have required a city to receive the approval of the governing body that previously had zoning jurisdiction before a change in zoning in an extraterritorial area. The bill draft would have allowed a governing body involved in the dispute to petition the Office of Administrative Hearings to appoint an administrative law judge to issue a binding determination relating to a disputed regulation.

Testimony in favor of the bill draft noted the bill draft returned the right to vote to all individuals in the extraterritorial zoning authority of a city.

Joint Jurisdiction - Outside Half Bill Draft

The commission considered, but does not recommend, a bill draft that would have provided for joint zoning regulation between a city and the previous jurisdiction with zoning authority in the outside half of the allowed area for extraterritorial zoning authority. The bill draft would have required any changes in that area to be approved by both governing bodies, otherwise the regulation in place at the time of the extension was deemed the regulation of the city. Under present law, the city has full jurisdiction in the outer half and under the bill draft there would need to be joint approval for any change in the outer half.

Testimony in favor of the bill draft expressed support for the concept of the initial regulation being the "default" regulation if agreement cannot be reached. The concern with extraterritorial zoning authority did not occur until 1997 when the distance was doubled. Because most of the testimony was directed toward issues with zoning in the expanded area, the bill draft was tailored to these concerns.

The commission noted that the bill draft required a property owner that wanted a change in zoning to have the approval of both boards and if either body rejected the change, there would not be a change. The commission also noted a concern that there was not a method for dispute resolution.

Testimony in opposition to the bill draft expressed the main concern that the bill draft did not return the right to

vote to the individuals living within the inside half of the extraterritorial zoning area.

Joint Jurisdiction - 10-Year Growth Plan - Dispute Resolution by Office of Administrative Hearings Bill Draft

The commission considered, but does not recommend, a bill draft that would have limited extraterritorial zoning jurisdiction to within a city's 10-year growth plan, required joint jurisdiction of the city and the governing body that exercised zoning or subdivision jurisdiction before the extension in the area of extraterritorial zoning, and provided for dispute resolution through the Office of Administrative Hearings to determine whether the proposed regulation is substantially related to the purpose of the regulation and does not unnecessarily burden affected persons. The bill draft had an application section that gave cities six months to phase back to the 10-year growth limit.

Testimony in opposition to the bill draft noted that growth projections are arbitrary and the standard used by the administrative law judge was improper. It was argued that there is no need for a city to expand unless the property owners want the city to expand. In addition, it was noted the bill draft required a landowner to go to two governing bodies to receive permission for a zoning change.

Commission discussion noted that many cities do not have a 10-year growth plan and requiring one provides for an unfunded mandate. As such, the bill draft provided a business opportunity for some contractors. However, commission discussion noted that a 10-year growth plan may be an appropriate factor for an administrative law judge. Other discussion noted that 10 years may not be long enough and a growth plan should be in the range of 20 years to 30 years.

Commission discussion noted that growth trends tailor the distance of extraterritorial zoning to the city. Growth trends would provide a more reasoned limit to extraterritorial zoning than an arbitrary distance for all cities of a particular class. Commission discussion also noted that distance of extraterritorial zoning jurisdiction does not matter if there is joint authority in the area.

The commission received testimony in favor of a city having zoning and subdivision authority in the city's 25-year growth area and for the board of county commissioners to approve or reject changes in the distance for that area.

Joint Jurisdiction - Outside Half - Dispute Resolution by Office of Administrative Hearings Bill Draft

The commission considered, but does not recommend, a bill draft that would have provided for joint jurisdiction between a city and the previous jurisdiction with zoning authority in the outside half of the area to be extraterritorially zoned and for any dispute to be resolved by the Office of Administrative Hearings. The standard for review by the Office of Administrative Hearings would have been whether the proposed regulation is substantially related to planning practices consistent with the city's comprehensive plan and does not unnecessarily limit appropriate land use by affected persons.

Testimony in opposition to the bill draft noted that by making the city's comprehensive plan the standard used by the administrative law judge, the comprehensive plan becomes legitimized. Presently, comprehensive plans are advisory.

Testimony in support of the bill draft favored the use of a comprehensive plan because a comprehensive plan is a public document.

The commission discussed whether a standard for review different from "substantially related" to a comprehensive plan should be used. The commission reviewed factors that could be used by an administrative law judge to resolve disputes in extraterritorial zoning authority regulation, including factors used by an administrative law judge in annexation disputes. Although there was concern that the more factors that were listed, the more legal problems that may arise, the commission determined a list of factors would be helpful in guiding the decision of the administrative law judge.

Commission discussion noted that the bill draft was considered a good compromise between no extraterritorial zoning authority and the present extraterritorial zoning authority especially considering if extraterritorial zoning authority is reduced there may be things that had been done that may be difficult to undo. However, commission discussion noted support for the concept of joint jurisdiction in the entire area, not just the outside half. It was noted that the issue concerning the right to vote was not addressed for the inside half. Commission discussion reiterated unwillingness to compromise on the issue of the right of citizens to vote for governing bodies that make decisions that concern them. Commission members noted that most of the testimony did not relate to concerns about the actual zoning but with the inability to vote.

Testimony in support of the bill draft noted that cities are unique in that they are the only political subdivision that may grow. Some counties have 10 cities and the county would be overburdened if it were the dispute resolution mechanism. Therefore, it was logical that the Office of Administrative Hearings be the decisionmaker. Although in support of the bill draft, there was some concern that the bill draft could make the system more difficult for the user. There also was support for one governing body taking care of zoning change requests from landowners. A landowner wishing to change zoning generally hires an attorney or engineer and increasing the entities involved and consequently the number of meetings to attend may increase the cost to the landowner. The commission was informed that although there may be two separate hearings for a landowner, these hearings would not have to be sequential but could be concurrent. The commission also discussed giving veto power to the township and having the city hold the hearing instead of having two hearings.

Joint Jurisdiction - Outside Half - 20-Year Growth Plan - District Court - Dispute Resolution Bill Draft

The commission discussed whether a bill draft could include all the elements in the bill drafts for which there was consensus. These concepts included joint jurisdiction and dispute resolution. In addition, there was support for including a list of statutory factors for an administrative law judge to base a decision. Commission discussion noted that if the factors for the administrative law judge are designed correctly, the law will adapt to each city. There also was consensus against creating extra layers of government. Generally, there was a support for linking extraterritorial zoning authority to a growth plan instead of an arbitrary mile limit and preference for political subdivisions involved to agree to the growth plan. There was contention as to whether the growth plan should be 10 years or up to 30 years but support for the proposition that joint jurisdiction made distance irrelevant. Commission discussion noted support for the board of county commissioners determining what growth is reasonable. There also was support for including townships in the decisionmaking process.

The commission received testimony from the Office of Administrative Hearings in favor of more factors on which an administrative law judge makes a decision relating to a dispute in an area of joint jurisdiction. The testimony noted concern for the funding mechanism for the administrative law judge. The Office of Administrative Hearings receives compensation by charging for its services. In addition, the commission was informed there should be a detailed procedure for appeal rights.

The commission discussed criteria the administrative law judge should use in making a determination, including the annexation criteria and factors. In addition, the commission suggested a number of factors, including whether the government in the area is willing to maintain the roads, whether zoning is compatible with adjacent land uses, whether the limit will lead to urban sprawl, and whether the city made a reasonable case for the growth plan. However, there was dissension over use of the term "urban sprawl" because it was not well-defined. The commission attempted to define urban sprawl as when development is expensive. Commission discussion noted the criteria of looking at the compatibility of land use with the city, township, and county plans and whether the land use would have a negative effect on the health and safety of the citizens. Commission discussion favored factors instead of the statutory annexation factors because annexation is for the very near term and extraterritorial zoning authority is for long-range planning.

The commission discussed the effect of dual hearings--one with the city and one with the previous jurisdiction with zoning authority--on the landowner. It was suggested that the city take the lead in the review and have a joint hearing of the township board and the planning commission, which would provide a recommendation to the city. If the planning commission recommends against the property owner, then the property owner would have to go to the board of township supervisors and the governing body of the city. In addition, the property owner would most likely go to both entities to follow through on the requested change. Discussion noted that it is not unreasonable for the property owner to go to both hearings and because these are important decisions, two hearings gives additional due process.

The commission considered, but does not recommend, a bill draft that would have limited the extraterritorial zoning authority of cities to a 20-year projected growth plan that was approved by the board of county commissioners. The district court was used as a dispute mechanism for the approval of a growth plan, instead of an administrative law judge, because of the idea that using the district court would quicken the process. The rationale was that only one issue would be before the district court--whether the growth plan reasonably projects growth.

The bill draft would have required joint jurisdiction with the previous entity with jurisdiction in the area of a 10-year growth plan to a 20-year growth plan with a dispute mechanism of an administrative law judge. A property owner would request zoning or subdivision decisions from the city unless the decision was to change zoning classification or for a conditional use permit, in which case, the owner would be able to request a change from the other jurisdiction, if the city denied the request. If the other jurisdiction rejected city's position, the city could petition the Office of Administrative Hearings to make a determination as to the dispute. The bill draft listed eight factors for the administrative law judge to consider in making determinations.

In practice the 20-year growth plan would be a 25-year plan with 1-year lines between 10 years and 15 years and between 20 years and 25 years. The plan would be updated on a yearly basis for a period of five years at which time the board of county commissioners could review the plan to determine if the assumptions used in the plan have become unreasonable due to significant changes in circumstances. For a major change in zoning, a property owner anywhere within the extraterritorial zoning jurisdiction, not just the outside half, would be provided a second chance with the previous entity with jurisdiction and an administrative law judge as a dispute mechanism for a major change in zoning.

The commission received testimony in opposition to the bill draft because of the use of terms that are confusing to planners. The bill draft used terms of art which have different meanings when used by planners. In addition, opponents pointed out the confusion that would have been caused by the multiple boundaries to be drawn as part of a growth plan which also would be burdensome to cities.

Repeal of Extraterritorial Zoning and Subdivision Regulation Authority Bill Draft

The commission considered, but does not recommend, a bill draft that would have repealed extraterritorial zoning and subdivision regulation by cities.

The commission received testimony in opposition to the bill draft because of the increased costs attributable to a repeal. There would be costs to individuals living in the former extraterritorial zoning area to transition from city water back to rural water if there was a repeal. It was argued that poor planning hinders economic development and cities are the best equipped to plan for growth around a city. Testimony indicated there would be additional costs for individuals when annexed into a city if there was no extraterritorial zoning because the individuals would pay for all improvements through special assessments instead of having some of these services paid citywide. In addition, there would be duplication of services which would be paid for when the area was annexed.

Commission discussion noted support for the bill draft because extraterritorial zoning authority is not essential. It was noted that the major reason for extraterritorial zoning authority was to plan for growth of cities and this reason should not disenfranchise voters.

The commission received testimony in favor of the bill draft from a few organized townships. However, concern was expressed over removing jurisdiction from the city and not replacing it with something else. The proposed solution was to have townships act as a group so there was uniformity in regulation around a city.

Commission members discussed whether any bill recommended by the commission should focus on improving existing law rather than starting over in the area of extraterritorial zoning authority. It was noted that extraterritorial zoning authority has worked well in most cases because there has been cooperation between the township and the city.

Extraterritorial Zoning Authority of One-Half Mile and Similar Regulation Bill Draft

In an attempt to address the concern of a city for health and safety immediately next to the city, the commission considered, but does not recommend, a bill draft that would have limited extraterritorial zoning authority to one-half mile and required the city to adopt regulations previously or subsequently adopted by a governmental entity with authority in the area before the extension. The one-half mile distance was used because under NDCC Section 40-06-01 a city has health and safety jurisdiction when within one-half mile of the border of the city.

Commission discussion pointed out that the bill draft did not provide any benefit to a city and was basically the same as a repeal of extraterritorial zoning authority. The contrary view was expressed that benefit to the city is that the city would be able to enforce regulations.

Repeal of Sunset on Present Extraterritorial Zoning Authority Law Bill Draft

The commission considered, but does not recommend, a bill draft that would have removed the sunset on present extraterritorial zoning authority law. The present law has limits at one-half mile, one mile, and two miles and allows an extension up to two times the distance allowed if approved by five members of a six-member committee. The committee consists of three members appointed by the governing body of the city and three members appointed, jointly, by the bodies of any political subdivision that is exercising zoning authority in the territory to be extraterritorially zoned. The bill draft had an application section that would have allowed the limits to be phased in over time as the cities expanded.

The commission received testimony in opposition to the bill draft because the bill draft related to determining the distance of extraterritorial zoning authority, rather than the regulations within that authority, and did not address the right to vote. Dislike for the present law also was noted because of the creation of a statutory committee that is considered unnecessary.

Joint Jurisdiction - Outside Half - Dispute Resolution by Administrative Law Judge Using Factors Bill Draft

The commission considered a bill draft that provided for joint jurisdiction between a city and the previous jurisdiction with zoning authority in the outside half and for an administrative law judge as the dispute mechanism with eight factors for the administrative law judge to consider.

Commission discussion noted that the bill draft balanced the rights of property owners with the need for cities to control growth. The bill draft addressed the major issues of whether there should be joint jurisdiction in the whole area or the outside half and which factors should be used to make a determination in the dispute mechanism. Testimony indicated that if the proper factors are used, joint jurisdiction in the entire area would not be difficult to administer.

The North Dakota League of Cities testified in favor of the bill draft and the list of factors. It was noted that one factor is whether the change is within the growth plan. Consideration of this factor will place the city in a stronger position to defend a change if the change is within the growth plan. The bill draft is intended to address future changes, not what is already in place, and the present regulation in the two-mile to four-mile area would remain the same.

Commission discussion noted that the complaint of people in the extraterritorial zoning area not having the right to vote for the person who makes a decision concerning them is not solved by having the decision made by an administrative law judge. The process in the bill draft would operate when a landowner requested a change from the city and the city does not grant the change. The landowner would then go to the township and if the township approved the change, then the administrative law judge would make the decision. An individual could get the township and city to agree before going to an administrative law judge.

The bill draft was amended to include joint jurisdiction in the entire area. The testimony against this change pointed out that extraterritorial zoning authority has worked well in the inside half. It was suggested that joint jurisdiction in the outside half be implemented first to see how well joint jurisdiction works before extending joint jurisdiction to the entire area. Testimony in favor of this change pointed out joint jurisdiction in the entire area

gives everyone in the extraterritorial area the right to vote for someone with control over the decision that relates to that individual. Commission discussion noted there should be little problem with extending joint jurisdiction to the entire area if the criteria are weighted toward the city when determining a dispute over property close to the city. Commission discussion suggested that future legislative changes most likely will center on the factors used by the administrative law judge.

Recommendation

The commission recommends Senate Bill No. 2027 to provide joint jurisdiction in the entire extraterritorial zoning area. The city and the previous jurisdiction with zoning authority would need to approve any changes in zoning. If unable to agree, an administrative law judge would settle the dispute after considering the following factors:

1. Whether the change is consistent with a project growth plan;
2. Whether the proposed change is substantially related to adopted comprehensive plans;
3. The impact on present and planned uses of the area;
4. The impact on health and safety;
5. The comparable ability of the jurisdictions involved to staff and enforce the change adequately;
6. The effect on the economic, physical, and social relationship of the people and businesses in the area and the effect on other political subdivisions;
7. A comparison of the economic impact of the change on property owners and on the city if there is not a change; and
8. Any other factor.

FEEDLOT ZONING

House Concurrent Resolution No. 3061 (2007) directed a Legislative Council study of the zoning of feedlot operations. Although the Legislative Council did not prioritize that study, the commission considered studying the zoning of the feedlot operations. It was suggested that the commission monitor Senate Bill No. 2278 (2007), which required the State Department of Health to operate an electronically accessible central repository for all county and township zoning regulations that pertain to concentrated feeding operations.

The commission received testimony in opposition to studying feedlot zoning. It was pointed out the Legislative Council did not prioritize the study because the parties involved needed time to review the operation of Senate Bill No. 2278. It also was argued that issues relating to feedlot zoning should be before the Agriculture Committee.

The commission was informed that issues relating to feedlot zoning may be addressed on a case-by-case basis and cleaning up a failed feedlot only requires spreading out the manure and filling up the waste ponds with dirt.

Commission members noted that the study could include a study of the classification of agricultural and industrial property for taxation purposes. The consensus was that the interim Taxation Committee was studying these matters and was the proper committee for taxation issues.

STATE AID DISTRIBUTION FUND

Under NDCC Section 57-39.2-26.1, the state aid distribution fund provides for allocation of a portion of sales, use, and motor vehicle excise tax collections among political subdivisions. The fund was created in 1987 to become effective in 1989 to combine preexisting personal property tax replacement and state revenue sharing programs. The 1987 legislation introduced a provision dedicating 60 percent of one percentage point of sales, use, and motor vehicle excise tax revenues for state aid distribution fund allocation in equal amounts to personal property tax replacement and state revenue sharing.

Personal Property Tax Replacement

Personal property tax replacement allocations to political subdivisions began with 1969 legislation intended to eliminate the personal property tax. Because personal property made up a large portion of the tax base of political subdivisions, eliminating the tax required the Legislative Assembly to overcome several obstacles, the biggest of which was replacing lost personal property tax revenues for political subdivisions. The 1969 legislation added a separate one percentage point to sales, use, and motor vehicle excise tax and broadened the sales tax base. These additional tax revenues were intended to provide for allocations to political subdivisions to offset the loss of the personal property tax base. Personal property tax replacement allocations were funded through general fund appropriations from 1969 until 1989 and incorporated in allocations from the state aid distribution fund beginning in 1989. The allocation formula was based on personal property taxes assessed in 1969 with a growth formula. Personal property tax replacement continued to be allocated under this legislation until the formula was repealed in 1997.

State Revenue Sharing

An initiated measure approved by the voters of the state on November 7, 1978, created the state revenue sharing program. The initiated measure created a state revenue sharing fund to which 5 percent of net proceeds from state income taxes and state sales and use taxes were to be deposited and allocated to city and county governments. One-half of the money in the state revenue sharing fund was to be allocated among counties and cities on the basis of population and the remaining one-half was to be allocated among counties and cities on the basis of property tax levies. State revenue sharing was funded through general fund appropriations from 1979 until 1989 and from the state aid distribution fund beginning in 1989.

State Aid Distribution Fund

The legislation establishing the state aid distribution fund retained the separate statutory allocation formulas

for state revenue sharing and personal property tax replacement. The legislation provided that 60 percent of revenue from one percentage point of state sales, use, and motor vehicle excise taxes would be allocated among political subdivisions, with equal amounts allocated under the state revenue sharing formula and the personal property tax replacement formula. The legislation also provided that state aid distribution fund allocations were subject to legislative appropriation. In 1997 significant changes were made to the state aid distribution fund. The amount allocated for distribution through the fund was reduced from 60 percent to 40 percent of revenue from one percentage point of state sales, use, and motor vehicle excise taxes. In addition, state aid distribution fund allocations would be provided under a continuing appropriation rather than a biennial appropriation. The preexisting state revenue sharing and personal property tax replacement formulas were eliminated and a single formula was created for allocation of state aid distribution fund revenues among political subdivisions. The following table shows biennial amounts allocated from the state aid distribution fund and the predecessor personal property tax replacement and revenue sharing programs:

Biennium/Funding Source	Personal Property Tax Replacement	Revenue Sharing	Counties	Cities	Total
1969-71/general fund	$18,900,000				$18,900,000
1971-73/general fund	$42,600,000				$42,600,000
1973-75/general fund	$18,170,000				$18,170,000
1975-77/general fund	$21,900,000				$21,900,000
1977-79/general fund	$24,300,000				$24,300,000
1979-81/general fund	$26,044,401	$17,403,838			$43,448,239
1981-83/general fund	$32,577,000	$21,840,000			$54,417,000
1983-85/general fund	$29,377,000	$22,000,000			$51,377,000
1985-87/general fund	$31,289,226	$28,654,079			$59,943,305
1987-89/general fund	$20,877,700	$20,877,700			$41,755,400
1989-91/state aid distribution fund	$27,104,150	$27,104,150			$54,208,300
1991-93/state aid distribution fund	$28,375,000	$28,375,000			$56,750,000
1993-95/state aid distribution fund	$25,750,000	$25,750,000			$51,500,000
1995-97/state aid distribution fund	$25,750,000	$25,750,000			$51,500,000
1997-99/state aid distribution fund			$28,968,508	$24,992,092	$53,978,600
1999-2001/state aid distribution fund			$33,940,222	$29,263,170	$63,203,392
2001-03/state aid distribution fund			$35,502,898	$30,610,328	$66,113,226
2003-05/state aid distribution fund			$39,489,898	$34,048,087	$73,537,985
2005-07/state aid distribution fund			$44,966,766	$38,770,228	$83,736,994
2007-09/state aid distribution fund (June 2008 estimate)			$50,987,537	$43,961,322	$94,948,859

The state aid distribution fund allocation divides revenues 53.7 percent to counties and 46.3 percent to cities. The distribution to counties and cities is based on population categories. Each population category receives a percentage of the county or city share of the total. The counties or cities within the categories receive their amounts based on population. The following chart shows the allocation of the fund among county and city population categories before the allocations formulas were revised based on the 2000 federal census:

Population Category			
Counties	Percentage	Cities	Percentage
100,000 or more	10.4%	20,000 or more	53.9%
40,000 or more but fewer than 100,000	18.0%	10,000 or more but fewer than 20,000	16.0%
20,000 or more but fewer than 40,000	12.0%	5,000 or more but fewer than 10,000	4.9%
10,000 or more but fewer than 20,000	14.0%	1,000 or more but fewer than 5,000	13.1%
5,000 or more but fewer than 10,000	23.2%	500 or more but fewer than 1,000	6.4%
2,500 or more but fewer than 5,000	18.3%	200 or more but fewer than 500	3.5%
Fewer than 2,500	4.1%	Fewer than 200	2.2%
Total	100.0%	Total	100.0%

Effective August 1, 2003, the state aid distribution formula for cities and counties was revised to account for population changes resulting from the 2000 federal census. The total distribution percentages to counties and cities remain at 53.7 percent to counties and 46.3 percent to cities. However, the allocation formula among counties and cities was changed as illustrated by the following table:

Population Category			
Counties	Percentage	Cities (Based on Population)	Percentage
17 counties with the largest population (allocated equally)	20.48%	80,000 or more	19.4%
17 counties with the largest population (allocated based on population)	43.52%	20,000 or more but fewer than 80,000	34.5%
Remaining counties (allocated equally)	14.40%	10,000 or more but fewer than 20,000	16.0%
Remaining counties (allocated based on population)	21.60%	5,000 or more but fewer than 10,000	4.9%
		1,000 or more but fewer than 5,000	13.1%
		500 or more but fewer than 1,000	6.1%
		200 or more but fewer than 500	3.4%
		Fewer than 200	2.6%
Total	100.0%	Total	100.0%

2007 Legislation

During the 2007 legislative session, House Bill No. 1447, which failed to pass the House, would have increased the amount allocated through the state aid

distribution fund from 40 percent to 50 percent of the revenue from one percentage point of state sales, use, and motor vehicle excise taxes. The fiscal note stated the change would increase the state aid distribution fund by $21 million with a corresponding reduction in general fund revenues.

Testimony and Discussion

The commission received testimony in support of increasing from four-tenths to five-tenths of one cent of the first penny of sales tax, the amount of sales tax that is deposited into the state aid distribution fund. An increase in funding from the state aid distribution fund should have an impact on levies and hence property taxes.

Commission discussion noted that the state aid distribution fund is related to property tax. The interim Taxation Committee was studying the feasibility and desirability of property tax reform in providing property tax relief to taxpayers of the state and the state aid distribution fund is a form of property tax relief. Commission consensus was that a study of the statewide distribution fund should be before the interim Taxation Committee.

RURAL ROADS AND BRIDGES

The commission received testimony in support of studying funding of rural township and county roads and bridges. Senate Bill No. 2275 (2007), which failed to pass, would have provided $4 million for county and township roads and bridges.

The interim Taxation Committee was studying the allocation of oil and gas revenues to or for the benefit of political subdivisions with emphasis on determining whether allocations sufficiently address oil and gas development infrastructure impact to political subdivisions. In addition, the interim Transportation Committee was studying highway funding and transportation infrastructure needs, including those needs resulting from energy and economic development in this state. Commission discussion noted that the commission should avoid duplicating studies by other interim committees.

The commission was informed that the Upper Great Plains Transportation Institute was conducting a study on generating public involvement in the transportation policy and funding decisionmaking process. The high costs of maintaining the transportation system are not generally known by the public and the transportation system is generally taken for granted because of the good job that is done in maintaining the system. The purpose of the study was to receive and continue public involvement to meet the transportation needs of this state, especially as a result of inflation. Inflation has increased costs up to 30 percent and maintenance projects have been delayed because of these costs.

The commission was informed on recent activities relating to the federal highway fund. The Department of Transportation testified that Congress is making rule changes in apportionments for states. Every year the appropriation is a little bit less than the apportionment, causing a recision. These recisions used to be absorbed in categories that are not used that much in this state. Congress may start to enforce these recisions across the board, however, instead of allowing states to transfer them to unused categories. This will result in less federal aid flowthrough to cities and counties.

Commission discussion noted that the federal government will not lower the match percentage because the federal government requires local governments to pay more in related fees, e.g., engineering fees, with the result that the 20 percent match is more like 40 percent when the fees local governments have to pay are included.

CHARITABLE ORGANIZATIONS' PROPERTY TAX EXEMPTIONS

The Constitution of North Dakota provides in Article X, Section 5, that ". . . property used exclusively for schools, religious, cemetery, charitable or other public purposes shall be exempt from taxation."

North Dakota Century Code Section 57-02-08(8) provides a property tax exemption for:

> All buildings belonging to institutions of public charity, including public hospitals and nursing homes licensed pursuant to section 23-16-01 under the control of religious or charitable institutions, used wholly or in part for public charity, together with the land actually occupied by such institutions not leased or otherwise used with a view to profit . . . .

2005-06 Interim Study

During the 2005-06 interim, the Advisory Commission on Intergovernmental Relations received testimony on the use of the phrase "in part," as in "used wholly or in part for public charity." A letter from the Tax Commissioner's office to the Grand Forks state's attorney in 1979 stated that "If a property is used partly for the charitable purposes of the public charity owner of the building and partly for other uses, the dominant use determines the use of the property." The commission was informed that the use of the words "in part" are inherently unclear; however, if the standard were "used wholly" for charitable purposes, there may be difficulty in having support for that proposition.

Testimony and Discussion

The commission was informed that a large percentage of the property in cities is exempt from property tax because the property is used for charitable purposes. The dominant use determines the use of the property and the term "in part" is a term that needs to be interpreted. Commission discussion included the term "in part" should be defined by the amount of revenue, the cost of providing charitable services, or by square footage.

ALTERNATIVES TO EXPRESSING PROPERTY TAX LEVIES IN MILLS

The commission reviewed information provided to the 2005-06 interim Finance and Taxation Committee relating to alternatives to the current method of

expressing property tax levies in mills per dollar of taxable valuation include:

2007 Legislation

Senate Bill No. 2033 (2007), which failed to pass the Senate, would have required property tax statements to include, or be accompanied by, information showing for the taxable year for which each tax statement applies for each taxing district levying taxes against the property taxes levied in dollars and taxes expressed in dollars per $1,000 of true and full valuation of the property. The legislative history reveals the main reason for the failure of the bill was that it imposed an unfunded mandate. It was argued that the bill would increase printing, postage, and computer programming costs while removing flexibility. The opinion also was expressed that the bill may have provided too much information for the taxpayer, thereby making the statement more confusing. If wanted by a taxpayer, the information may be accessed online in most counties.

Commission Discussion

Commission discussion noted the reason for looking at this subject was because placing taxes in terms of mills confuses and complicates taxation. It was argued that taxes should be changed to dollars per thousand dollars, which would provide a more transparent taxation structure.

Commission discussion also noted, however, that changing mills to dollars would not address the confusion on statements relating to assessed, taxable, and full and true value. Any change would be a major undertaking and would have a great impact on financial officers and auditors and political subdivisions. In addition, there was the constitutional concern of mills being used in the constitution; thereby requiring a constitutional change to express taxation in dollars instead of mills.

STATE'S ATTORNEYS IN RURAL AREAS

The North Dakota State's Attorneys Association testified that current law provides options to share state's attorneys with adjoining counties. The main issue is those counties that do not have a resident state's attorney. In addition, the testimony supported the proposition that state's attorneys should be elected and not appointed by boards of county commissioners so that state's attorneys remain independent and beholden to the electorate.

Statutory Provisions

Under NDCC Section 11-16-01, the state's attorney is the public prosecutor of the county and institutes and defends civil actions for the county. Under Section 11-16-05, a state's attorney generally is prohibited from being an attorney for another party besides the county. Under Section 11-16-02, the state's attorney may appoint assistant state's attorneys who have the same powers as the state's attorney. The work of an assistant state's attorney is required to be assigned by the state's attorney. Under Section 11-16-06, if a county does not have a state's attorney or the state's attorney is absent or unable to attend to the duties of state's attorney or has refused or neglected to perform certain duties, a judge of district court is to request the Attorney General to take charge of the prosecution or proceeding or may appoint an attorney to take charge of the prosecution or proceeding.

The general rule under NDCC Section 11-10-02 is that each organized county must have an elected state's attorney. There are two kinds of exceptions to the requirement that the office is elective--appointment and agreement.

North Dakota Century Code Section 11-10-02.3 provides that 10 percent or more of the qualified electors of a county may petition the board of county commissioners to place the question of appointing the state's attorney on the ballot. A majority vote at that election changes the position from elective to appointive. Under Section 11-10-04, a state's attorney must be a qualified elector of the county at the time of the election if elected and a qualified elector in the county if appointed. However, upon the approval of the board of county commissioners of each affected county, a state's attorney may serve as an elected officer in more than one county if the state's attorney is a qualified elector of one of the counties. In addition, two or more counties may appoint a person to be state's attorney in each county if the state's attorney is a qualified elector of one of the counties. There are special provisions for the boards of county commissioners of two or more counties to agree by resolution to elect a multicounty jurisdiction state's attorney. In this case, the state's attorney must be a qualified elector of the multicounty jurisdiction at the time of the election. In addition, the board of county commissioners of two or more counties may agree by resolution to allow any candidate for the office of state's attorney to petition for office in each county. The state's attorney may serve in both counties if the state's attorney is a qualified elector of one of the counties at the time of election and the state's attorney receives the highest number of votes for office in the county in which the state's attorney is not a resident.

Under NDCC Section 44-02-01, a vacancy in the office of state's attorney may occur for a number of reasons, including ceasing to be a resident of the county or other political subdivision in which the duties of the office are to be discharged or ceasing to possess any of the qualifications of the office. In addition under Section 44-02-02, a state's attorney may resign from office. Section 44-02-04 provides for the filling of vacancies in county offices. Under this section, generally a vacancy in the office of state's attorney must be filled by the board of county commissioners. In addition under Section 44-01-04, if a person is elected state's attorney but fails to qualify for the office, the office is deemed vacant and must be filled by appointment as provided by law. Under Section 44-02-09, the person appointed must qualify in the manner required of a person elected or appointed to the office.

North Dakota Century Code Chapter 11-10.3 allows for the multicounty combination of elective officers. Under Section 11-10.3-01, a proposal for combining county elective offices may be accomplished by a joint

powers agreement subject to the right of referendum or by initiative of electors of the affected county. In the case of a joint powers agreement, this section provides for the procedures to refer the issue and procedures for the electors to submit the issue for consideration at an election. A plan adopted under this chapter may be revised or terminated through another joint powers agreement, by petition in the same manner as for adopting a plan, or pursuant to the terms of the original joint powers agreement. Section 11-10.3-02 provides for suggested terms of the joint powers agreement and provides that the plan may not diminish the term of office, redesignate the office, or reduce the salary of the office.

Legislative History and Attorney General's Opinions

Since the 1999 legislative session, there have been at least six Attorney General's opinions to relate to these statutes and state's attorneys. The year of 1999 is chosen as the beginning date because that was the year in which the last major change to these statutes occurred and is after a change in the Constitution of North Dakota.

Article VII, Section 8, of the Constitution of North Dakota as amended in 1998 and 2002 provides, in part:

> Elective officers shall be elected by the electors in the jurisdiction in which the elected officer is to serve. A candidate for election for sheriff must be a resident in the jurisdiction in which the candidate is to serve at the time of the election. The office of sheriff shall be elected. The Legislative Assembly may provide by law for the election of any county elective officer, other than the sheriff, to serve one or more counties provided the affected counties agree to the arrangement and any candidate elected to the office is a qualified elector of one of the affected counties.

In 1999 NDCC Section 11-10-02.3 was created to authorize a county to place the question of appointing the state's attorney before the county electors upon submission to the board of county commissioners of a petition signed by 10 percent or more of the total number of qualified electors in the county voting for Governor at the most recent gubernatorial election or upon resolution of the board of county commissioners.

In 2001 NDCC Section 11-10-04 was amended to authorize the boards of county commissioners of two or more counties to agree by resolution to elect a multicounty jurisdiction state's attorney pursuant to the provisions of law relating to multicounty officers. In addition, the boards of county commissioners of two or more counties were authorized to agree by resolution to allow any candidate for office of state's attorney to petition for office in each county and to serve if elected if the candidate is a qualified elector of one of the counties at the time of the election.

In 2001 the Attorney General issued a letter opinion (2001-L-33) that interpreted this 2001 law. At issue was whether the Grant County commissioners could appoint a state's attorney who was not a resident of Grant County upon the resignation of the current state's attorney who was the only licensed attorney in Grant County. The Attorney General opined that although the change in the law appeared to provide county commissioners with more options regarding the appointment of a state's attorney, Article IV, Section 8, of the Constitution of North Dakota placed a limitation that all candidates for county elections must be a resident in the jurisdiction in which they are to serve at the time of the election. The opinion stated that although NDCC Section 11-10-04 purports to provide an option to a board of county commissioners when appointing a state's attorney to fill a vacancy in the elective office, the constitution limits the available options.

The opinion illuminated a provision that seemed to provide a method for addressing the dilemma in Grant County. Under NDCC Section 11-10-04(5), a state's attorney may be elected with multicounty jurisdiction pursuant to an agreement between county commissioners of two or more counties in accordance with Chapter 11-10.3.

The opinion noted two other exceptions in which a nonresident could be appointed as state's attorney, but these exceptions applied solely if the state's attorney were appointed rather than elected. First, Grant County could change the form of government to the county consolidated office form of government or the short form of county managership, thereby authorizing the appointment of a state's attorney from an adjoining county. Second, Grant County could become a home rule county and get voter approval to make the state's attorney an appointed official, thereby allowing the home rule county to establish its own qualification requirements for its appointed state's attorney.

In 2001 the Attorney General opined (2001-L-37) that a board of county commissioners may not hire a private attorney to represent the board without first obtaining the advice and consent of the county state's attorney. The opinion noted that the board may employ additional counsel to assist the state's attorney under limited circumstances and those circumstances require the advice and consent of the state's attorney.

In another letter (2002-L-67) the Attorney General addressed the fact situation of a state's attorney not seeking reelection and the individual elected to the position in the November general election was not a resident of the county and had not notified the county that that person would assume the position. The opinion stated that when the new state's attorney did not take office there would be a vacancy that must be filled by an appointment by the board of county commissioners; however, the person appointed must meet the qualifications for that office as required by law. One of those qualifications is to be a resident unless there is an exception. One exception is when two or more counties agree that one person may serve as the state's attorney of more than one county; however, the state's attorney must be a qualified elector in one of the counties. The Attorney General suggested an alternative if the county with the vacancy could not find a state's attorney to serve or if an agreement could not be reached with another county. Under NDCC Section 11-16-02, a

state's attorney may appoint assistant state's attorneys. The assistant state's attorney is not an elected county officer and no residency or qualified elector status is required for that person to perform the duties of a state's attorney. The law does not make the continued employment of an assistant state's attorney dependent upon the continued presence of the state's attorney, provided the board of county commissioners has approved the appointment by establishing compensation for the assistant state's attorney.

In 2002 the Attorney General opined (2002-L-68) that an individual elected in two separate counties as state's attorney may serve as state's attorney in both counties if the individual is an elector in one of the counties and the board of county commissioners in each of the counties approves as required by NDCC Section 11-10-04(2).

In 2006 the Attorney General opined (2006-L-33) that a person appointed to fill a vacant state's attorney position must have resided in the county for at least 30 days before the appointment in order to qualify for office. In addition, a candidate for state's attorney need not be a resident of the county at the time the candidate circulates petitions to appear on the ballot for the state's attorney position but must be a resident at least 30 days before the general election.

In a letter opinion (2006-L-38), the Attorney General addressed the fact situation in which the Foster County state's attorney was the state's attorney of Griggs County through a joint powers agreement that was about to expire. The Attorney General opined that absent the approval of the two counties, the office of state's attorney in Griggs County would be vacant and the Griggs County board of commissioners would be free to appoint an attorney who is a qualified elector as state's attorney until the next general election. An interesting fact was that the person who was the Foster and Griggs Counties state's attorney received the highest number of votes for the position of state's attorney in Griggs County for the period of time after which the joint powers agreement expired. However, in the most recent primary election, the question of whether the Griggs County state's attorney should be appointed was defeated. In addition, the Attorney General stated the runnerup in the recent general election was not entitled to assume the elective office when the high votegetter was ineligible or not qualified to serve.

Testimony and Discussion

The commission was informed that three counties do not have a state's attorney who is an elector of that county. The counties are in different parts of the state. The difficulty with having a resident state's attorney is similar to meeting the residency requirement for other elected positions. The commission received testimony on two instances of particular concern. First, in one county the state's attorney is appointed and is a member of an out-of-state law firm. Second, a state's attorney could run for the purpose of appointing an assistant state's attorney to do the work of state's attorney.

Despite these two concerns, the commission was informed that the present law works well even when there is not a resident attorney in the county who can or wants to run for the position of state's attorney. The present laws that allow a county to appoint a state's attorney are relatively new. The North Dakota State's Attorneys Association testified that these laws may need minor changes to address particular problems but as a whole address the vast majority of issues. In addition, the association was in favor of retaining the county-based system instead of moving to a state-based system.

REPORT ON COUNTY DOCUMENT PRESERVATION FUNDS

History

In 2005 the Legislative Assembly enacted Senate Bill No. 2024. The bill removed the June 30, 2005, expiration date for the document preservation fund and continued the additional fees imposed for the purpose of funding the document preservation fund. 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 offsite storage of microfilm or electronic duplicates of documents for the county recorder's office. The bill required each recorder, before March 1 of each even-numbered year, to prepare a report that specifies how the county used the county's document preservation funds during the preceding two fiscal years, how the county's use of the document preservation funds has furthered the goal of document preservation, and the county's general strategic plans for its document preservation. The county reports must be submitted to the North Dakota Association of Counties for compilation and submission to the Legislative Council. Since 2005 the Legislative Council has designated the Advisory Commission on Inter-governmental Relations as the entity to receive the reports.

The commission monitored the survey of county recorders on the use of county document preservation funds. On March 26, 2008, the commission received the report from the Association of Counties on the use of document preservation funds. The report provided information on how each county used the county's document preservation fund during the preceding two fiscal years. Every county has continued the creation of archival copies of each land record on microfilm. All records are duplicated back to the very first records. Fifty counties, compared to 46 counties two years ago, have implemented one of five different automated systems of land record management. Thirty-three counties use the system provided by Computer Software Associates. Forty-five counties, compared to 40 counties two years ago, have linked the county automated system into one central repository. The joint repository allows duplicate electronic images of each record to be immediately sent to a backup server in Fargo for the image to be published on the World Wide Web and for an automatic copy of the image to be placed in archival microfilm storage. All but four counties need books for old records.

AGRICULTURE COMMITTEE

The Agriculture Committee was assigned one study. Senate Bill No. 2139 (2007) directed a study of North Dakota Century Code provisions, which relate to agriculture, for the purposes of eliminating provisions that are irrelevant or duplicative, clarifying provisions that are inconsistent or unclear in their intent and direction, and rearranging provisions in a logical order.

The committee also was directed to receive a report from the State Board of Agricultural Research and Education regarding its annual evaluation of research activities and expenditures.

Committee members were Representatives Phillip Mueller (Chairman), Tracy Boe, Mike Brandenburg, Rodney J. Froelich, Curt Hofstad, Dennis Johnson, Joyce Kingsbury, Dorvan Solberg, and Gerry Uglem and Senators Arthur H. Behm, Bill Bowman, Robert S. Erbele, Tim Flakoll, Ryan M. Taylor, and Terry M. Wanzek.

The committee submitted this report to the Legislative Council at the biennial meeting of the Council in November 2008. The Council accepted the report for submission to the 61st Legislative Assembly.

NORTH DAKOTA CENTURY CODE PROVISIONS RELATING TO AGRICULTURE

The following table identifies North Dakota Century Code (NDCC) provisions that specifically relate to agriculture:

NDCC Citation	Chapter Heading
Title 4	**Agriculture**
4-01	Agriculture Commissioner
4-02	Agricultural Fair Associations
4-02.1	State Fair Association
4-05.1	Agricultural Experiment Station and Agricultural Research
4-08	County Agent
4-09	State Seed Department
4-09.1	Inspections and Grading of Agricultural Commodities
4-10	Inspection and Grading of Potatoes and Other Produce
4-10.1	Potato Industry Promotion Act
4-10.2	Oilseed Industry Promotion
4-10.3	Dry Bean Industry Promotion
4-10.4	Barley
4-10.5	Soybean Council
4-10.6	Corn Industry Promotion
4-10.7	Dry Pea and Lentil Council
4-11	Regulation of Wholesale Potato Dealers
4-11.1	Potato Production Contracts
4-12.1	Honey Promotion Act
4-12.2	Beekeeping
4-13.1	Turkey Promotion Act
4-13.2	Poultry Division
4-14	Unfair Discrimination in Purchase of Farm Products
4-14.1	Agriculturally Derived Fuel Tax Fund
4-14.2	Northern Crops Institute
4-16	Eradication of Gophers, Rabbits, and Crows
4-18.1	Milk Marketing Board
4-19	Forestry and Tree Distribution
4-21	Tree Bounty
4-21.1	Nurseries and Nursery Stock
4-21.2	Trees for North Dakota Program
4-22	Soil Conservation Districts Law
4-23	Agricultural Conservation and Adjustment Law
4-24	Miscellaneous
4-25	Seed Sales Regulations
4-26	Seed Potato Act
4-27	Dairy Promotion Commission
4-28	North Dakota State Wheat Commission
4-30	Dairy Products Regulations
4-32	Interstate Pest Control Compact
4-33	Plant Pests
4-34	Beef Promotion Act
4-35	Pesticide Act
4-35.1	Chemigation Regulation
4-35.2	Pesticide and Pesticide Container Disposal
4-36	Agricultural Development Act
4-37	Agriculture in the Classroom
4-38	Organic Foods Standards
4-39	Cultivated Ginseng
4-40	Crop Protection Products
4-41	Industrial Hemp
4-42	Seeds and Crops Inspection and Analysis
4-43	Meatpacking Plant Assistance
Title 6	**Banks and Banking**
6-09.8	Beginning Farmer Loan Guarantee Program
6-09.9	Family Farm Survival Act
6-09.10	Credit Review Board and Agricultural Mediation
6-09.11	Financial Assistance for Family Farmers
6-09.13	Agriculture Partnership in Assisting Community Expansion
Title 10	**Corporations**
10-06.1	Corporate or Limited Liability Company Farming
Title 19	**Foods, Drugs, Oils, and Compounds**
19-05.1	Food Donated to Charity
19-06.1	Honey
19-07	Eggs
19-13.1	North Dakota Commercial Feed Law
19-14	Livestock Medicine
19-17	Flour and Bread Standards
19-18	Pesticide Registration
19-20.1	Fertilizer and Soil Conditioner Law
19-20.2	Anhydrous Ammonia Facilities
19-21	Labeling of Hazardous Substances
19-22	Labeling of Potatoes as to Grade
19-22.1	Sale of Artificially Colored Potatoes
Title 35	**Liens**
35-05	Crop Mortgages
35-06	Pledge
35-17	Agister's Lien
35-30	Agricultural Processor's Lien
35-31	Agricultural Supplier's Lien
Title 36	**Livestock**
36-01	State Board of Animal Health
36-04	Livestock Dealers
36-05	Livestock Auction Markets
36-05.1	Satellite Video Livestock Auction Markets
36-06	Purchase of Livestock by Packing Plants
36-07	Rendering Plants
36-08	Cooperative Grazing Associations
36-09	Brands and Marks
36-11	Trespass of Livestock
36-12	Herding and Driving
36-13	Estrays
36-14	Contagious and Infectious Diseases Generally
36-14.1	Hog Cholera
36-15	Bovine Tuberculosis and Brucellosis
36-21	General Provisions
36-21.1	Humane Treatment of Animals
36-22	Estray Inspection
36-24	Meat Inspection
36-25	Farmed Elk

OBJECTIVES AND SCOPE OF COMMITTEE'S EFFORTS

The committee reviewed the 94 chapters listed above and concluded that it would be appropriate to

consolidate the laws pertaining to agriculture under one title. The committee also concluded that the nature and extent of the rewrite made amending current sections of the North Dakota Century Code virtually impossible. Therefore, the committee directed that the rewrite create a new title that could accommodate the vast array of listed subjects and concepts in an organized and comprehensible fashion.

The committee focused its efforts on the 12 commodity boards and commissions, as well as the noxious weed laws. The committee opted to place the proposed chapters pertaining to the commodity boards and commissions into one bill draft and to place all sections pertaining to noxious weeds into a separate bill draft.

The committee recognized that within its study directive, the committee would have to rewrite laws that were irrelevant, duplicative, inconsistent, illogically arranged, or unclear in their intent and direction. The committee also determined that an equally important objective was to ensure that the rewritten sections accurately reflected the manner in which business was conducted. The ultimate objective was to present a bill that would clearly indicate rights, duties, obligations, and consequences with respect to the agriculture laws of this state.

OMITTED PROVISIONS

During the study, the committee determined that a number of North Dakota Century Code sections were unnecessary or duplicative of other provisions. The committee consequently directed that those sections be omitted from the proposed new title. The following table lists the sections repealed by omission and the reason for that action:

Subject - NDCC Section	Rationale for Omission
Potatoes	
4-10.1-01	Unnecessary
4-10.1-10	Unnecessary
4-10.1-11	Repealed in 1975
4-10.1-14	Duplicative
4-10.1-17	Duplicative
Oilseeds	
4-10.2-13	Duplicative
4-10.2-12	Repealed in 1991
Dry beans	
4-10.3-12	Repealed in 1991
4-10.3-14	Repealed in 1991
Barley	
4-10.4-13	Duplicative
Soybeans	
4-10.5-07 (Portions pertaining to designated handler certificates)	Unnecessary
4-10.5-08	Repealed in 1997
4-10.5-09	Unnecessary
4-10.5-13	Duplicative
Corn	
4-10.6-07	Unnecessary
4-10.6-13	Duplicative
4-10.6-15	Duplicative
Dry peas and lentils	
4-10.7-13	Duplicative
4-10.7-16	Duplicative
Honey	
4-12.1-06	Duplicative
Turkeys	
4-13.1-01	Unnecessary
4-13.1-11	Duplicative
Dairy	
4-27-01	Unnecessary
4-27-09	Unnecessary
4-27-10	Repealed in 2005
4-27-11	Unnecessary
Beef	
4-34-12	Unnecessary
Noxious weeds	
63-01.1-03.2	Unnecessary
63-01.1-04.2	Repealed in 2005
63-01.1-05.1	Duplicative
63-01.1-06.1	Repealed in 1993
63-01.1-06.2	Repealed in 1993
63-01.1-06.3	Repealed in 1993
63-01.1-06.4	Repealed in 1993
63-01.1-06.5	Repealed in 1993
63-01.1-06.6	Repealed in 1993
63-01.1-07	Repealed in 1979
63-01.1-10	Repealed in 1981
63-01.1-11	Repealed in 1981
63-01.1-12.2	Unworkable
63-01.1-13.1	Repealed in 1993
63-01.1-16	Repealed in 1993
63-01.1-17	Repealed in 1993
63-01.1-19	Duplicative
63-01.1-20	Duplicative
63-01.1-21	Duplicative
63-01.1-22	Duplicative
63-01.1-23	Duplicative
63-01.1-24	Duplicative
63-01.1-25	Duplicative

CROSS-REFERENCE TABLE - AGRICULTURAL COMMODITIES

The following table sets forth current North Dakota Century Code sections and their placement in the proposed Title 4.1:

Commodity - Present NDCC Section	Proposed NDCC Section
Potatoes	
4-10.1-02	4.1-10-07
4-10.1-03	4.1-10-01
4-10.1-04	4.1-10-03
	4.1-10-04
4-10.1-05	4.1-10-02
4-10.1-06	4.1-10-05
	4.1-10-06
4-10.1-07	4.1-10-14
4-10.1-08	4.1-10-07
	4.1-10-08
4-10.1-09	4.1-10-09
	4.1-10-10
	4.1-10-11
	4.1-10-12
	4.1-10-15
4-10.1-12	4.1-10-13
4-10.1-13	4.1-10-16
4-10.1-15	4.1-10-17
4-10.1-16	4.1-10-12
Oilseeds	
4-10.2-01	4.1-09-13
4-10.2-02	4.1-09-01
4-10.2-03	4.1-09-04
	4.1-09-05
	4.1-09-06
	4.1-09-07
	4.1-09-08
4-10.2-04	4.1-09-02
4-10.2-04.1	4.1-09-03
4-10.2-05	4.1-09-10
	4.1-09-11
	4.1-09-12
4-10.2-06	4.1-09-21
4-10.2-07	4.1-09-13
	4.1-09-14

4-10.2-08	4.1-09-15
	4.1-09-16
	4.1-09-17
	4.1-09-18
	4.1-09-22
4-10.2-09	4.1-09-19
	4.1-09-20
4-10.2-10	4.1-09-23
4-10.2-11	4.1-09-24
Dry beans	
4-10.3-01	4.1-06-10
4-10.3-02	4.1-06-01
4-10.3-03	4.1-06-03
	4.1-06-04
4-10.3-04	4.1-06-02
4-10.3-05	4.1-06-06
	4.1-06-07
	4.1-06-08
4-10.3-06	4.1-06-17
4-10.3-07	4.1-06-09
4-10.3-08	4.1-06-11
	4.1-06-12
	4.1-06-13
	4.1-06-14
	4.1-06-18
4-10.3-09	4.1-06-10
	4.1-06-15
	4.1-06-16
4-10.3-10	4.1-06-14
	4.1-06-19
	4.1-06-20
Barley	
4-10.4-01	4.1-02-01
4-10.4-02	4.1-02-10
4-10.4-03	4.1-02-03
	4.1-02-04
	4.1-02-05
4-10.4-04	4.1-02-02
4-10.4-05	4.1-02-07
	4.1-02-08
	4.1-02-09
4-10.4-06	4.1-02-18
4-10.4-07	4.1-02-10
	4.1-02-11
4-10.4-08	4.1-02-12
	4.1-02-13
	4.1-02-14
	4.1-02-15
	4.1-02-19
4-10.4-09	4.1-02-11
	4.1-02-16
	4.1-02-17
4-10.4-10	4.1-02-20
4-10.4-11	4.1-02-10
4-10.4-12	4.1-02-14
4-10.4-14	4.1-02-21
Soybeans	
4-10.5-01	4.1-11-01
4-10.5-02	4.1-11-03
	4.1-11-04
	4.1-11-05
4-10.5-03	4.1-11-02
4-10.5-04	4.1-11-07
	4.1-11-08
4-10.5-05	4.1-11-09
4-10.5-06	4.1-11-09
	4.1-11-10
4-10.5-07	4.1-11-11
	4.1-11-12
	4.1-11-13
	4.1-11-14
	4.1-11-15
4-10.5-10	4.1-11-09
4-10.5-11	4.1-11-14
4-10.5-14	4.1-11-16
Corn	
4-10.6-01	4.1-04-01

4-10.6-02	4.1-04-03
	4.1-04-04
4-10.6-03	4.1-04-02
4-10.6-04	4.1-04-06
	4.1-04-07
4-10.6-05	4.1-04-16
4-10.6-06	4.1-04-08
4-10.6-08	4.1-04-10
4-10.6-09	4.1-04-11
	4.1-04-12
4-10.6-10	4.1-04-11
	4.1-04-12
	4.1-04-15
	4.1-04-17
4-10.6-11	4.1-04-09
	4.1-04-13
	4.1-04-14
4-10.6-12	4.1-04-18
4-10.6-16	4.1-04-19
Dry peas and lentils	
4-10.7-01	4.1-07-01
4-10.7-02	4.1-07-03
4-10.7-03	4.1-07-04
	4.1-07-05
4-10.7-04	4.1-07-02
4-10.7-05	4.1-07-07
	4.1-07-08
4-10.7-06	4.1-07-17
4-10.7-07	4.1-07-09
	4.1-07-10
4-10.7-08	4.1-07-11
4-10.7-09	4.1-07-12
4-10.7-10	4.1-07-13
	4.1-07-14
4-10.7-11	4.1-07-10
	4.1-07-15
	4.1-07-16
4-10.7-12	4.1-07-19
4-10.7-14	4.1-07-14
4-10.7-15	4.1-07-18
4-10.7-17	4.1-07-20
Honey	
4-12.1-01	4.1-08-01
	4.1-08-06
4-12.1-02	4.1-08-02
	4.1-08-03
4-12.1-03	4.1-08-05
4-12.1-04	4.1-08-04
4-12.1-05	4.1-08-03
4-12.1-07	4.1-08-07
4-12.1-08	4.1-08-08
4-12.1-09	4.1-08-09
Turkeys	
4-13.1-02	4.1-12-01
	4.1-12-09
4-13.1-03	4.1-12-02
4-13.1-04	4.1-12-03
	4.1-12-05
4-13.1-05	4.1-12-08
4-13.1-06	4.1-12-04
	4.1-12-10
4-13.1-07	4.1-12-07
4-13.1-08	4.1-12-10
4-13.1-09	4.1-12-06
4-13.1-10	4.1-12-11
4-13.1-12	4.1-12-05
4-13.1-13	4.1-12-12
Dairy	
4-27-02	4.1-05-07
4-27-03	4.1-05-01
4-27-04	4.1-05-02
	4.1-05-03
4-27-05	4.1-05-04
	4.1-05-05
	4.1-05-06
	4.1-05-07

4-27-06	4.1-05-08
	4.1-05-09
	4.1-05-12
	4.1-05-14
4-27-07	4.1-05-10
4-27-08	4.1-05-11
4-27-12	4.1-05-15
Wheat	
4-28-01	4.1-13-14
4-28-02	4.1-13-01
4-28-03	4.1-13-03
	4.1-13-04
	4.1-13-05
	4.1-13-06
	4.1-13-07
	4.1-13-08
	4.1-13-09
	4.1-13-10
	4.1-13-19
4-28-04	4.1-13-02
4-28-05	4.1-13-11
	4.1-13-12
	4.1-13-25
4-28-06	4.1-13-13
	4.1-13-14
4-28-07	4.1-13-14
4-28-07.1	4.1-13-15
	4.1-13-16
	4.1-13-18
	4.1-13-22
	4.1-13-23
	4.1-13-24
4-28-08	4.1-13-17
	4.1-13-20
	4.1-13-21
4-28-09	4.1-13-26
Beef	
4-34-01	4.1-03-10
4-34-02	4.1-03-01
4-34-03	4.1-03-02
	4.1-03-03
	4.1-03-04
4-34-04	4.1-03-02
4-34-05	4.1-03-05
	4.1-03-07
	4.1-03-09
	4.1-03-10
4-34-06	4.1-03-06
	4.1-03-07
4-34-07	4.1-03-08
4-34-08	4.1-03-11
4-34-09	4.1-03-12
4-34-10	4.1-03-13
	4.1-03-16
4-34-11	4.1-03-17
4-34-13	4.1-03-15
	4.1-03-18
4-34-14	4.1-03-14

CROSS-REFERENCE TABLE - NOXIOUS WEEDS

The following table sets forth current North Dakota Century Code sections that pertain to noxious weeds and their placement in the noxious weed bill draft:

NDCC Section	Noxious Weeds Bill Section
63-01.1-01	Section 3
63-01.1-02	Section 2
63-01.1-03	Section 5
	Section 6
63-01.1-03.1	Section 8
63-01.1-04	Section 7
63-01.1-04.1	Section 10
63-01.1-04.3	Section 9
63-01.1-04.4	Section 11
63-01.1-05	Section 10
63-01.1-06	Section 15
	Section 16
	Section 17
63-01.1-07.1	Section 19
63-01.1-07.2	Section 21
63-01.1-07.3	Section 20
63-01.1-07.4	Section 22
63-01.1-07.5	Section 25
63-01.1-07.6	Section 17
	Section 26
63-01.1-08	Section 29
63-01.1-09	Section 10
63-01.1-10.1	Section 18
63-01.1-12	Section 31
63-01.1-12.1	Section 30
63-01.1-13	Section 27
	Section 28
63-01.1-14	Section 28
63-01.1-15	Section 30
	Section 31
	Section 32
63-01.1-18	Section 33

CROSS-REFERENCE TABLE FOR PROPOSED SECTIONS - AGRICULTURAL COMMODITIES

The following table sets forth the sections in the proposed Title 4.1 and the Title 4 sections from which they were derived:

Commodity - Proposed NDCC Section	Present NDCC Section
Barley	
4.1-02-01	4-10.4-01
4.1-02-02	4-10.4-04
4.1-02-03	4-10.4-03
4.1-02-04	4-10.4-03
4.1-02-05	4-10.4-03
4.1-02-06	New concept
4.1-02-07	4-10.4-05
4.1-02-08	4-10.4-05
4.1-02-09	4-10.4-05
4.1-02-10	4-10.4-02
	4-10.4-07
	4-10.4-11
4.1-02-11	4-10.4-07
	4-10.4-09
4.1-02-12	4-10.4-08
4.1-02-13	4-10.4-08
4.1-02-14	4-10.4-08
	4-10.4-12
4.1-02-15	4-10.4-08
4.1-02-16	4-10.4-09
4.1-02-17	4-10.4-09
4.1-02-18	4-10.4-06
4.1-02-19	4-10.4-08
4.1-02-20	4-10.4-10
4.1-02-21	4-10.4-14
Beef	
4.1-03-01	4-34-02
4.1-03-02	4-34-03
	4-34-04
4.1-03-03	4-34-03
4.1-03-04	4-34-03
4.1-03-05	4-34-05
4.1-03-06	4-34-06
4.1-03-07	4-34-05
	4-34-06
4.1-03-08	4-34-07
4.1-03-09	4-34-05
4.1-03-10	4-34-01
	4-34-05
4.1-03-11	4-34-08
4.1-03-12	4-34-09

4.1-03-13	4-34-10
4.1-03-14	4-34-14
4.1-03-15	4-34-13
4.1-03-16	4-34-10
4.1-03-17	4-34-11
4.1-03-18	4-34-13
Corn	
4.1-04-01	4-10.6-01
4.1-04-02	4-10.6-03
4.1-04-03	4-10.6-02
4.1-04-04	4-10.6-02
4.1-04-05	New concept
4.1-04-06	4-10.6-04
4.1-04-07	4-10.6-04
4.1-04-08	4-10.6-06
4.1-04-09	4-10.6-11
4.1-04-10	4-10.6-08
4.1-04-11	4-10.6-09
	4-10.6-10
4.1-04-12	4-10.6-09
	4-10.6-10
4.1-04-13	4-10.6-11
4.1-04-14	4-10.6-11
4.1-04-15	4-10.6-10
	4-10.6-14
4.1-04-16	4-10.6-05
4.1-04-17	4-10.6-10
4.1-04-18	4-10.6-12
4.1-04-19	4-10.6-16
Dry beans	
4.1-06-01	4-10.3-02
4.1-06-02	4-10.3-04
4.1-06-03	4-10.3-03
4.1-06-04	4-10.3-03
4.1-06-05	New concept
4.1-06-06	4-10.3-05
4.1-06-07	4-10.3-05
4.1-06-08	4-10.3-05
4.1-06-09	4-10.3-01
	4-10.3-07
4.1-06-10	4-10.3-01
	4-10.3-09
4.1-06-11	4-10.3-08
4.1-06-12	4-10.3-08
4.1-06-13	4-10.3-08
4.1-06-14	4-10.3-08
	4-10.3-11
4.1-06-15	4-10.3-09
4.1-06-16	4-10.3-09
4.1-06-17	4-10.3-06
4.1-06-18	4-10.3-08
4.1-06-19	4-10.3-10
4.1-06-20	4-10.3-11
Dairy	
4.1-05-01	4-27-03
4.1-05-02	4-27-04
4.1-05-03	4-27-04
4.1-05-04	4-27-05
4.1-05-05	4-27-05
4.1-05-06	4-27-05
4.1-05-07	4-27-02
	4-27-05
4.1-05-08	4-27-06
4.1-05-09	4-27-06
4.1-05-10	4-27-07
4.1-05-11	4-27-08
4.1-05-12	4-27-06
4.1-05-13	New concept
4.1-05-14	4-27-06
4.1-05-15	4-27-12
Dry peas and lentils	
4.1-07-01	4-10.7-01
4.1-07-02	4-10.7-04
4.1-07-03	4-10.7-02
4.1-07-04	4-10.7-03
4.1-07-05	4-10.7-03
4.1-07-06	New concept
4.1-07-07	4-10.7-05

4.1-07-08	4-10.7-05
4.1-07-09	4-10.7-07
4.1-07-10	4-10.7-07
	4-10.7-11
4.1-07-11	4-10.7-08
4.1-07-12	4-10.7-09
4.1-07-13	4-10.7-10
4.1-07-14	4-10.7-10
	4-10.7-14
4.1-07-15	4-10.7-11
4.1-07-16	4-10.7-11
4.1-07-17	4-10.7-06
4.1-07-18	4-10.7-15
4.1-07-19	4-10.7-12
4.1-07-20	4-10.7-17
Honey	
4.1-08-01	4-12.1-01
4.1-08-02	4-12.1-02
4.1-08-03	4-12.1-02
	4-12.1-05
4.1-08-04	4-12.1-04
4.1-08-05	4-12.1-03
4.1-08-06	4-12.1-01
4.1-08-07	4-12.1-07
4.1-08-08	4-12.1-08
4.1-08-09	4-12.1-09
Oilseeds	
4.1-09-01	4-10.2-02
4.1-09-02	4-10.2-04
4.1-09-03	4-10.2-04.1
4.1-09-04	4-10.2-03
4.1-09-05	4-10.2-03
4.1-09-06	4-10.2-03
4.1-09-07	4-10.2-03
4.1-09-08	4-10.2-03
4.1-09-09	New concept
4.1-09-10	4-10.2-05
4.1-09-11	4-10.2-05
4.1-09-12	4-10.2-05
4.1-09-13	4-10.2-01
	4-10.2-07
4.1-09-14	4-10.2-01
	4-10.2-07
4.1-09-15	4-10.2-08
4.1-09-16	4-10.2-08
4.1-09-17	4-10.2-08
4.1-09-18	4-10.2-08
	4-10.2-11
4.1-09-19	4-10.2-09
4.1-09-20	4-10.2-09
4.1-09-21	4-10.2-06
4.1-09-22	4-10.2-08
4.1-09-23	4-10.2-10
4.1-09-24	4-10.2-11
Potatoes	
4.1-10-01	4-10.1-03
4.1-10-02	4-10.1-05
4.1-10-03	4-10.1-04
4.1-10-04	4-10.1-04
4.1-10-05	4-10.1-06
4.1-10-06	4-10.1-06
4.1-10-07	4-10.1-02
	4-10.1-08
4.1-10-08	4-10.1-08
4.1-10-09	4-10.1-09
4.1-10-10	4-10.1-09
4.1-10-11	4-10.1-09
4.1-10-12	4-10.1-09
	4-10.1-16
4.1-10-13	4-10.1-12
4.1-10-14	4-10.1-07
4.1-10-15	4-10.1-09
4.1-10-16	4-10.1-13
4.1-10-17	4-10.1-15
Soybeans	
4.1-11-01	4-10.5-01
4.1-11-02	4-10.5-03
4.1-11-03	4-10.5-02

4.1-11-04	4-10.5-02
4.1-11-05	4-10.5-02
4.1-11-06	New concept
4.1-11-07	4-10.5-04
4.1-11-08	4-10.5-04
4.1-11-09	4-10.5-05
	4-10.5-06
	4-10.5-10
4.1-11-10	4-10.5-06
4.1-11-11	4-10.5-07
4.1-11-12	4-10.5-07
4.1-11-13	4-10.5-07
4.1-11-14	4-10.5-07
	4-10.5-11
4.1-11-15	4-10.5-07
4.1-11-16	4-10.5-14
Turkeys	
4.1-12-01	4-13.1-02
4.1-12-02	4-13.1-03
4.1-12-03	4-13.1-04
4.1-12-04	4-13.1-06
4.1-12-05	4-13.1-04
	4-13.1-12
4.1-12-06	4-13.1-09
4.1-12-07	4-13.1-07
4.1-12-08	4-13.1-05
4.1-12-09	4.13.1-02
4.1-12-10	4-13.1-06
	4-13.1-08
4.1-12-11	4-13.1-10
4.1-12-12	4-13.1-13
Wheat	
4.1-13-01	4-28-02
4.1-13-02	4-28-04
4.1-13-03	4-28-03
4.1-13-04	4-28-03
4.1-13-05	4-28-03
4.1-13-06	4-28-03
4.1-13-07	4-28-03
4.1-13-08	4-28-03
4.1-13-09	4-28-03
4.1-13-10	4-28-03
4.1-13-11	4-28-05
4.1-13-12	4-28-05
4.1-13-13	4-28-06
4.1-13-14	4-28-01
	4-28-06
	4-28-07
4.1-13-15	4-28-07.1
4.1-13-16	4-28-07.1
4.1-13-17	4-28-08
4.1-13-18	4-28-07.1
4.1-13-19	4-28-03
4.1-13-20	4-28-08
4.1-13-21	4-28-08
4.1-13-22	4-28-07.1
4.1-13-23	4-28-07.1
4.1-13-24	4-28-07.1
4.1-13-25	4-28-05
4.1-13-26	4-28-09

CROSS-REFERENCE TABLE FOR PROPOSED SECTIONS - NOXIOUS WEEDS

The following table sets forth the sections in the noxious weed bill draft and the Title 4 sections from which they were derived:

Noxious Weeds Bill Section	NDCC Section
Section 2	63-01.1-02
Section 3	63-01.1-01
Section 4	63-01.1-03
	63-01.1-08
Section 5	63-01.1-03
Section 6	63-01.1-03
Section 7	63-01.1-04
Section 8	63-01.1-03.1
Section 9	63-01.1-04.3
Section 10	63-01.1-04.1
	63-01.1-05
	63-01.1-09
Section 11	63-01.1-04.4
Section 12	63-01.1-04
Section 13	63-01.1-04.3
Section 14	63-01.1-04.1
Section 15	63-01.1-06
Section 16	63-01.1-06
Section 17	63-01.1-06
Section 18	63-01.1-10.1
Section 19	63-01.1-07.1
Section 20	63-01.1-07.3
Section 21	63-01.1-07.2
Section 22	63-01.1-07.4
Section 23	63-01.1-07.1
Section 24	63-01.1-07.3
Section 25	63-01.1-07.5
Section 26	63-01.1-07.6
Section 27	63-01.1-13
Section 28	63-01.1-13
	63-01.1-14
Section 29	63-01.1-08
Section 30	63-01.1-12.1
	63-01.1-15
Section 31	63-01.1-12
	63-01.1-15
Section 32	63-01.1-15
Section 33	63-01.1-18

COMMITTEE RECOMMENDATIONS

The committee recommends House Bill No. 1025 to rewrite those portions of the North Dakota Century Code that relate to the North Dakota Barley Council and assessments, the North Dakota Beef Commission and assessments, the North Dakota Corn Utilization Council and assessments, the North Dakota Dairy Promotion Commission and assessments, the North Dakota Dry Bean Council and assessments, the North Dakota Dry Pea and Lentil Council and assessments, the North Dakota Honey assessments, the North Dakota Oilseed Council and assessments, the North Dakota Potato Council and assessments, the North Dakota Soybean Council and assessments, the North Dakota Turkey assessments, and the North Dakota State Wheat Commission and assessments.

The committee recommends House Bill No. 1026 to rewrite those portions of the North Dakota Century Code that relate to noxious weeds.

The committee recommends House Concurrent Resolution No. 3001 directing the Legislative Council to continue its study and rewrite of North Dakota Century Code sections that pertain to agriculture.

MISCELLANEOUS

The committee received a report from the State Board of Agricultural Research and Education. In accordance with NDCC Section 4-05.1-19, the board examined adverse economic impacts on crops and livestock, developed ongoing strategies for the provision of research solutions and resources to negate such adverse economic impacts, and developed ongoing strategies for the dissemination of research information through the Extension Service. The board also established the 2009 priorities for both the Agricultural Experiment Station and the North Dakota State University Extension Service.

BUDGET AND FINANCE COMMITTEE

The Budget and Finance Committee was created and assigned the following responsibilities by the Legislative Council chairman:

- Monitor the status of state revenues and expenditures for the 2007-09 biennium.
- Receive input from major state agencies regarding the status of their budgets and changes in federal funds.
- Receive information from major state agencies regarding anticipated program changes, costs to continue, and other budget needs for the 2009-11 biennium, including elementary and secondary education, higher education, human services, corrections, and transportation.
- Receive information on any deferred maintenance issues relating to facilities and other infrastructure throughout state government.
- Review current budget forms and guidelines, consider any appropriate changes, and provide a recommendation to the Budget Section.
- Receive input from industry and academic representatives on the status of the state's economy, state revenue impact, and expectations for the 2009-11 biennium.
- Receive information from the economic forecasting consultant under contract with the state on the state's economy, including strengths and weaknesses, and provide input to the consultant on the development of the July 2008 revised general fund revenue forecast for the 2007-09 biennium and the preliminary forecast for the 2009-11 biennium.
- Receive the July 2008 revised general fund revenue forecast.
- Review projected revenues, expenditures, and fund balances of major state funds.
- Review preliminary information on 2009-11 biennium estimated revenues and appropriation requirements, including cost-to-continue items.
- Discuss possible legislative initiatives that would affect the budget.
- Discuss possible methods of returning excess revenues to North Dakota taxpayers.
- Identify key budget issues for the 2009 legislative session.
- As appropriate, make recommendations to the Legislative Council.

Committee members were Representatives Al Carlson (Chairman), Ole Aarsvold, Rick Berg, Merle Boucher, Jeff Delzer, Bob Martinson, Bob Skarphol, Ken Svedjan, and Clark Williams and Senators Randel Christmann, Tony Grindberg, Ray Holmberg, Elroy N. Lindaas, David O'Connell, Larry J. Robinson, and Bob Stenehjem.

The committee submitted this report to the Legislative Council at the biennial meeting of the Council in November 2008. The Council accepted the report for submission to the 61st Legislative Assembly.

NORTH DAKOTA'S BUDGETING PROCESS

The committee reviewed North Dakota's budgeting process and constitutional and statutory provisions relating to the state budget, including Article V, Section 7, of the Constitution of North Dakota relating to the powers of the Governor; Article X, Section 12, of the Constitution of North Dakota relating to legislative appropriations; North Dakota Century Code (NDCC) Sections 54-35-12 through 54-35-14 relating to the powers of the legislative budget analyst and auditor; and Chapter 54-44.1 relating to the office of the budget.

The committee learned the budget preparation process begins at the beginning of each even-numbered year by the Governor releasing instructions and guidelines to state agencies for the preparation of their budget requests for the upcoming biennium. Preliminary information is received in April on buildings and infrastructure of state agencies and is used for building and infrastructure formulas. The statutory deadline for agencies to submit their budget requests is July 15; however, the Office of Management and Budget (OMB) often grants extensions to agencies allowing them to include the most current information in the preparation of their budget request. In 2008 most large agencies did not submit their budget requests until the end of October or early November.

After each agency's budget request has been submitted and certified by OMB, a budget hearing may be held on the agency's budget request if the agency requests a hearing.

At the Legislative Assembly's organizational session in December of each even-numbered year, the Governor presents the executive budget recommendation for the next biennium to the Legislative Assembly. The Office of Management and Budget introduces bills to provide for the revenue and appropriation levels recommended in the Governor's budget. Individual legislators may also introduce bills affecting state revenues or an appropriation for an agency. As it develops the legislative budget, the Legislative Assembly considers the Governor's recommendations and information received through public hearings held in each chamber on each appropriation and revenue bill. Each bill having an appropriation of $5,000 or more, or a bill with a fiscal note indicating a fiscal impact of $50,000 on an agency's appropriation is by rule required to be referred to the Appropriations Committee. The Legislative Assembly approves the final state budget for the upcoming biennium by the end of the regular session, usually in April of the odd-numbered year.

REVENUE PROJECTION PROCESS

The committee reviewed North Dakota's revenue projection process and learned the executive budget office has primary authority for revenue forecasting in North Dakota. Historically, during each biennium, OMB issues three revenue forecasts:

- June preliminary revenue forecast - Issued in the even-numbered year prior to the start of the legislative session.
- December executive budget revenue forecast - Presented along with the executive budget recommendations to the Budget Section and to the organizational session of the Legislative Assembly.
- February revised revenue forecast - Presented in February prior to crossover during the legislative session at which time the forecast is reviewed by legislative leadership, Appropriations Committee members, and Finance and Taxation Committee members of both houses. The Appropriations Committees by motion approve the revised revenue forecast which is then used as the "official" legislative revenue forecast.

The Office of Management and Budget contracts with Moody's Economy.com to provide economic projections for the state of North Dakota.

Moody's Economy.com provides tax-based forecasts for each of the major taxable sectors. Reports prepared by Moody's Economy.com include analyses and forecasts of sweet crude oil prices and North Dakota's major crops and livestock, including farm income and cash receipts for livestock and products.

The Tax Department is responsible for the basic methodology for forecasting the following general fund tax types--sales, motor vehicle excise, individual income, corporation income, financial institution, oil extraction, oil and gas production, cigarette and tobacco, coal conversion, and wholesale liquor taxes. The Office of Management and Budget projects interest income and departmental collections categories of the revenue forecast. The revenue forecasting process includes the following steps:

- At the start of each of the three forecasts, the Tax Department updates the historical tax base statistics and provides the results to Moody's Economy.com.
- Moody's Economy.com processes the historical data through forecasting models, adjusting and updating forecast equations or "drivers" as needed.
- The Tax Department and OMB participate in conference calls with Moody's Economy.com to discuss views on the United States and North Dakota economies.
- Moody's Economy.com creates North Dakota's tax-based forecasts for each of the next three fiscal years.
- The Office of Management and Budget schedules a meeting of its Revenue Advisory Committee to review the tax-based forecasts and make any modifications as determined by the committee. The Revenue Advisory Committee includes representatives of the major economic sectors and two legislators.
- The Tax Department applies the appropriate tax rates and statutory distributions through the use of in-house tax revenue models to produce the tax revenue forecast, which is supplied to OMB.

2007-09 BIENNIUM BUDGET INFORMATION

Status of the General Fund and Selected Other Funds

The committee received the following schedule regarding the actual July 1, 2007, beginning balance of selected funds compared to estimates made at the close of the 2007 Legislative Assembly:

	April 2007 Forecast	Actual Balance	Additional Funds Available
Beginning balance - July 1, 2007			
General fund	$218,350,170	$295,541,176	$77,191,006
Budget stabilization fund	200,000,000	200,000,000	0
Permanent oil tax trust fund	136,666,681	143,270,662	6,603,981
Total	$555,016,851	$638,811,838	$83,794,987

The committee learned that the $77 million of additional general fund money available on July 1, 2007, was the result of revenues exceeding projections by $74 million and 2005-07 general fund unspent appropriation authority (turnback) being approximately $3.1 million more than the $10 million anticipated during the legislative session.

At each meeting, the committee received information on the status of the general fund and permanent oil tax trust fund. The following schedule shows the status of the **general fund** for the 2007-09 biennium as of September 30, 2008:

July 1, 2007, balance	$295,541,176
Estimated revenues	2,634,848,870
Estimated available funds	$2,930,390,046
Appropriations	(2,461,973,956)
Estimated June 30, 2009, balance	$468,416,090

The committee learned that through September 2008 general fund revenues exceeded the legislative forecast by $247.8 million or 17.9 percent. Major variances related to sales tax and individual and corporate income tax categories. Compared to the July 2008 forecast, revenues through September 2008 exceeded estimates by approximately $14.5 million.

The committee received the July 2008 revised general fund revenue forecast for the 2007-09 biennium. The committee learned that 2007-09 general fund ongoing revenues, excluding transfers, are anticipated to total $2.421 billion, $363 million or 17.6 percent more than the $2.058 billion anticipated by the 2007 Legislative Assembly.

The following schedule shows the status of the **permanent oil tax trust fund** for the 2007-09 biennium as of September 30, 2008:

July 1, 2007, balance	$143,270,662
Estimated revenues	634,601,015
Estimated available funds	$777,871,677
Appropriations	(145,716,541)
Estimated June 30, 2009, balance	$632,155,136

The committee received information on the **budget stabilization fund**. The committee learned at the end of the 2003-05 biennium, $99,472,631 was transferred to the budget stabilization fund from the general fund and at the end of the 2005-07 biennium, $100,527,369 was transferred to the budget stabilization fund. The current balance in the budget stabilization fund is $200 million.

The committee learned that House Bill No. 1429 (2007) increased effective July 1, 2009, the maximum balance allowed in the budget stabilization fund from 5 percent to 10 percent of the general fund budget approved by the most recent session of the Legislative Assembly. Pursuant to NDCC Section 54-27.2-02, the budget stabilization fund transfer occurs at the end of the biennium after cancellation of unexpended appropriations under Section 54-44.1-11. Section 54-44.1-11 states that appropriations cancel 30 days after the close of each biennial period. The close of the 2007-09 biennium is June 30, 2009; therefore, 30 days later is July 30, 2009. Because Section 2 of House Bill No. 1429 becomes effective on July 1, 2009, the provisions of the bill will affect the budget stabilization fund transfers occurring at the end of the 2007-09 biennium. The committee learned that if 2009-11 biennium general fund appropriations increase by 10.8 percent, which is the average biennial percentage increase for the last 10 years, an additional $72.8 million would be transferred to the budget stabilization fund at the end of the 2007-09 biennium under current law resulting in a June 30, 2009, balance of $272.8 million in the fund.

North Dakota Economy

The committee reviewed economic statistics and economic projections for North Dakota. The committee received information from the University of North Dakota Bureau of Business and Economics Research, North Dakota State University Department of Agriculture and Applied Economics, Job Service North Dakota, Department of Mineral Resources of the Industrial Commission, Department of Financial Institutions, Wheat Commission, and the Stockmen's Association. The committee also reviewed a history of state revenues and appropriations compared to selected economic indicators since 1971.

The committee learned that:

- The economic indicators that most closely predict general fund revenue collections include gross state product and personal income.
- North Dakota nonfarm personal income is anticipated to increase by approximately 3 percent each year for the next three years.
- Wheat prices are anticipated to decrease from $8.57 per bushel for the 2007-08 crop year to $6.74 for the 2010-11 crop year.
- Italy imported the most United States durum and Japan imported the most United States spring wheat for the 2007-08 marketing year.
- The United States feed grain cost per steer in 2008 exceeds $280 compared to approximately $130 in 2006.
- Employment in the state increased by 27,433 jobs or 8.7 percent during the past five years.
- North Dakota ranks 49th in the number of home foreclosures nationwide.

Oil-Related Information

The committee received information on oil production and prices during the 2007-09 biennium. North Dakota oil prices ranged from $61 per barrel in July 2007 to a high of $136 per barrel in July 2008 to $52 on October 31, 2008. Oil production began the biennium at 124,000 barrels per day and has steadily increased to 185,000 barrels per day in October 2008.

In August 2008 North Dakota had 80 oil rigs operating within the state. Each oil rig can drill approximately 10 wells per year, and the cost of each well drilled averages $5.8 million.

The committee learned that North Dakota had been experiencing oil pipeline capacity limitations resulting in price discounts for North Dakota-produced oil. For the period December 2005 through June 2008, the committee learned that oil discounts had resulted in the loss of an estimated $19.1 million of oil-related tax revenue and that the estimated average discounts ranged from no discount to discounts of over $11 per barrel. The Industrial Commission anticipates any North Dakota oil production over 160,000 barrels per day will be discounted due to oil pipeline capacity limitations. Because of pipeline capacity limitations, more oil is now being transported by rail. The committee learned it costs approximately $1 to $2 per barrel to transport oil by pipeline to Minnesota compared to a cost of approximately $13 per barrel to transfer oil by rail to Oklahoma. The committee learned approximately five years is needed to plan and construct an oil pipeline.

The committee received schedules of oil and gas tax and mineral royalty allocations to cities and counties for fiscal years 2004 through 2008 and through October 20, 2008, for fiscal year 2009. Total allocations for each fiscal year (FY) have been:

FY 2004	$16,617,551
FY 2005	$22,317,470
FY 2006	$25,251,238
FY 2007	$27,634,797
FY 2008	$40,838,421

The committee received information on the actual fiscal effect of provisions of Senate Bill No. 2178 (2007) and House Bill No. 1044 (2007) relating to oil tax distributions. The committee learned Senate Bill No. 2178, which increased maximum county oil and gas tax allocations by $1 million, is currently anticipated to increase the counties' share and reduce state revenues by $10.8 million for the 2007-09 biennium. House Bill No. 1044, which increases the counties' share of oil and gas tax collections beginning the second year of the 2007-09 biennium is currently anticipated to increase the counties' share and reduce state revenues by $5 million for the 2007-09 biennium.

The committee learned the fiscal note for Senate Bill No. 2178 indicated a $2 million increase in the counties' share and a $2 million decrease in the state share of oil

and gas tax revenues. House Bill No. 1044 was anticipated to increase the counties' share and reduce the state share by $5.9 million.

For the 2009-11 biennium, it is anticipated that provisions of these two bills will increase the counties share and reduce state revenues by $22 million, $12 million of which relates to provisions of Senate Bill No. 2178 and $10 million relates to provisions of House Bill No. 1044.

The committee received information on the oil and gas tax agreement of the Three Affiliated Tribes - Mandan, Hidatsa, and Arikara Nation and the state. The committee learned the agreement was signed in June 2008 and established a uniform taxation system for oil and gas producers in the boundaries of the Fort Berthold Indian Reservation. The agreement is effective for production periods beginning July 1, 2008. The tax rate for production on trust land and nontrust land is 5 percent for gross production tax and 6.5 percent for oil extraction tax. The agreement provides that oil and gas tax revenue from production on trust land be allocated 50 percent to the tribe and 50 percent to the state and political subdivisions based on the statutory distribution formulas. Oil and gas tax revenue from production on nontrust lands will be allocated 20 percent to the tribe and 80 percent to the state for gross production taxes and 100 percent of oil extraction taxes to the state and political subdivisions based on statutory distribution formulas. The committee learned the agreement allows the tribe to impose one-time fees totaling $100,000 relating to the siting of the well and use of the land.

The committee learned the new taxation structure applies to oil produced from previously drilled wells only during the term of the agreement; however, taxation of oil from any new wells drilled during the effective dates of the agreement apply for the life of the well under the terms of the agreement.

Property Tax Income Tax Credits

The committee received information on property tax income tax credits. The 2007 Legislative Assembly approved Senate Bill No. 2032 creating for the 2007 and 2008 tax years an income tax credit for property taxes paid by eligible individuals and corporations. The 2007 Legislative Assembly anticipated the income tax credits would reduce tax collections by $112 million during the 2007-09 biennium--$101 million relating to individual income tax and $11 million relating to corporate income tax. The committee learned for the 2007 filing year through September 2008, residential and agriculture-related income tax credits totaling $36.9 million were claimed by 149,057 taxpayers and $3.6 million of commercial property tax income tax credits were claimed by 14,319 taxpayers. In total, $40.4 million of income tax credits were claimed by 162,376 taxpayers. Of these, 6,053 taxpayers claimed the maximum credit allowed. Based on credits claimed to date, the Tax Department does not believe the total of $112 million in credits originally anticipated to be claimed under the program for the biennium will be realized.

Status of Agency Expenditures

The committee received information on the status of state agencies' 2007-09 biennium budgets, federal funds and programmatic changes, agency compliance with legislative intent, extraordinary repairs funding and expenditures, and the status of one-time funding items. Agencies directly reporting to the committee regarding these items were the Information Technology Department, Tax Department, Department of Public Instruction, North Dakota University System, State Department of Health, Department of Human Services, Department of Corrections and Rehabilitation, Department of Commerce, State Historical Society, State Water Commission, and Department of Transportation. The committee learned that:

- The Department of Public Instruction anticipates a remaining balance of state aid formula per student payments funding of approximately $730,000 for the 2007-09 biennium.
- Higher education institutions are experiencing budget shortfalls relating to the cost of utilities during the 2007-09 biennium.
- The University System anticipates $1 million of the $2.7 million appropriated from the permanent oil tax trust fund for the Northern Tier Network will not be needed during the 2007-09 biennium and plans to request authority to continue the appropriation for the 2009-11 biennium to pay for Northern Tier Network maintenance costs for the first year of the 2009-11 biennium.
- The State Department of Health anticipates spending $1.4 million of the $2 million from the general fund appropriated for the immunization program transition.
- The Department of Human Services increased the eligibility level for the children's health insurance program from 140 to 150 percent of poverty effective October 1, 2008.
- The State Water Commission anticipates spending a total of $85 million on water projects for the 2007-09 biennium.
- The Department of Transportation received $240 million of federal highway construction funds for the 2007 construction season, $19 million more than the $221 million anticipated.
- The Department of Transportation has experienced significant price increases in oil-based materials, steel, concrete, equipment, and other building materials.

2009-11 BIENNIUM BUDGET INFORMATION

Agency Budget Requests

The committee received information on the 2009-11 biennium state agency budget requests and information from OMB on the development of the 2009-11 biennium budget. Agencies directly reporting to the committee regarding their anticipated budget needs for the 2009-11 biennium were the Information Technology Department, Tax Department, Department of Public Instruction, North Dakota University System, State Department of Health, Department of Human Services, Department of

Corrections and Rehabilitation, Department of Commerce, State Historical Society, State Water Commission, and Department of Transportation.

The committee received information on the Governor's budget guidelines for the 2009-11 biennium. The committee learned the Governor directed agencies to develop a 100 percent, or hold-even budget, for the 2009-11 biennium. Major grant programs in the Department of Public Instruction are not subject to the 100 percent guideline, and for planning purposes, the University System is to submit a needs-based budget. The committee learned through October 20, 2008, 59 agencies had submitted their budget request. Eleven of the larger state agencies had been granted extensions by OMB; therefore, the committee was unable to review budget request data for these larger agencies since the budget requests had not yet been submitted. The committee reviewed information on total 2009-11 biennium budget requests of those agencies that had submitted their budgets and on major general fund increases being requested.

The committee received information from OMB on cost-to-continue items that may be included in the 2009-11 biennium budget. The committee learned it is difficult to determine a cost-to-continue percentage that would be applicable to all agencies since each agency is unique.

Preliminary Revenue Forecast

The committee received the preliminary 2009-11 biennium revenue forecast. The committee learned general fund ongoing revenues are anticipated to total $2.735 billion for the 2009-11 biennium, an 8 percent increase, compared to the 2007-09 biennium revised revenue forecast adjusted for the 2007-09 biennium effect of the property tax income tax credit.

The committee learned the 2009-11 biennium forecast anticipates transfers of $666 million to the permanent oil tax trust fund for the 2009-11 biennium, $41 million or 6.6 percent more than the $625 million anticipated to be transferred during the 2007-09 biennium.

Potential 2009-11 Biennium Transfers to the General Fund

The committee received information from the Bank of North Dakota, Mill and Elevator, Industrial Commission, and Land Department regarding potential amounts that may be available for transfer from the Bank of North Dakota, Mill and Elevator, student loan trust fund, and lands and minerals trust fund to the general fund during the 2009-11 biennium.

The committee learned continuing the $60 million transfer of Bank of North Dakota profits to the general fund during the 2009-11 biennium will allow for capital growth of the Bank of North Dakota of an estimated $50 million to provide the Bank nearly $300 million in capital and a leverage ratio of nearly 8 percent by the end of the 2009-11 biennium.

The committee learned while the Mill and Elevator experienced a net loss of $821,000 for fiscal year 2008, the mill is anticipating negative market conditions to stabilize by the 2009-11 biennium, and if this occurs, the mill anticipates profits to return to a more normal level of approximately $7.2 million per biennium which is the average of the last four bienniums.

The committee learned the student loan trust fund anticipates income of approximately $2.4 million for the 2009-11 biennium, $600,000 less than the $3 million anticipated for the 2007-09 biennium.

The committee learned the Land Department is anticipating the lands and minerals trust fund will have a $16.8 million June 30, 2009, balance and anticipated revenues of over $24 million for the 2009-11 biennium. Based on these projections, an estimated $39 million could be transferred to the general fund during the 2009-11 biennium resulting in a $1 million ending balance for the fund on June 30, 2011.

State Debt

The committee received information on outstanding bond indebtedness and outstanding special assessment balances of state agencies on July 1, 2007, and July 1, 2009, and options available to prepay these bonds or special assessments during the 2009-11 biennium.

The committee learned the North Dakota Building Authority had $129.1 million in outstanding bonds on June 30, 2007, compared to $107.8 million projected outstanding on June 30, 2009.

The committee learned that to prepay the $107.8 million of outstanding bonds by July 2009 would cost $114.6 million. Because of the additional cost to prepay the bonds at the present time based on current market conditions, representatives of the Industrial Commission recommend not prepaying the bonds at this time. The committee learned the Industrial Commission will continue to monitor market conditions and analyze the cost-benefit of prepaying outstanding bonds.

The committee learned, based on the preliminary 2009-11 biennium revenue forecast, the state will have available debt service of $12.1 million in the 2011-13 biennium which would allow the 2009 Legislative Assembly to issue debt of between $70 million and $80 million and still remain within the statutory bond payment guideline.

The committee learned institutions of higher education and state agencies estimated outstanding special assessments balance on July 1, 2009, is $2.1 million. The estimated future savings resulting from paying the outstanding special assessments balance is approximately $800,000.

Committee Considerations

The committee reviewed preliminary estimates of ongoing general fund revenues and one-time funding available for the 2009-11 biennium and the effect of alternative general fund spending levels. The following charts summarize the information reviewed by the committee:

Preliminary Estimate of Ongoing Revenues and Potential Spending Levels - 2009-11 Biennium				
	Option A 8 percent[1]	**Option B 10.8 percent[2]**	**Option C 15.8 percent[3]**	**Option D 21.6 percent[4]**
	(Amounts Shown in Millions)			
Estimated ongoing revenues	$2,734.7	$2,734.7	$2,734.7	$2,734.7
Estimated ongoing transfers	84.4	84.4	84.4	84.4
Estimated total available ongoing funds	$2,819.1	$2,819.1	$2,819.1	$2,819.1
Potential appropriations				
Base level - 2007-09 ongoing appropriations	($2,317.4)	($2,317.4)	($2,317.4)	($2,317.4)
Optional levels - Additional appropriations or revenue reductions	(185.4)	(250.3)	(366.2)	(501.7)
Total potential appropriations or revenue reductions	($2,502.8)	($2,567.7)	($2,683.6)	($2,819.1)
Potential ongoing funding balance (shortfall)	$316.3	$251.4	$135.5	$0.0

[1]**Option A** - Based on the same percentage increase (**8 percent**) that ongoing revenues are anticipated to increase during the 2009-11 biennium compared to 2007-09 biennium revised revenue estimates.

[2]**Option B** - Based on the same percentage increase (**10.8 percent**) that general fund appropriations have increased, on average, each biennium for the past 10 years.

[3]**Option C** - Based on the same percentage increase (**15.8 percent**) that general fund ongoing appropriations increased for the 2007-09 biennium compared to the 2005-07 biennium.

[4]**Option D** - Based on spending all the additional ongoing revenues available for the 2009-11 biennium which results in a **21.6 percent** increase compared to 2007-09 biennium ongoing appropriations.

Preliminary Estimate of One-Time Revenues - 2009-11 Biennium			
	General Fund	**Permanent Oil Tax Trust Fund**	**Total**
	(Amounts Shown in Millions)		
Estimated balance - July 1, 2009	$388.6	$632.2	$1,020.8
Estimated revenues		666.0	666.0
Estimated total available	$388.6	$1,298.2	$1,686.8

The committee considered, but did not recommend, establishing guidelines or targets for 2009-11 biennium spending levels. Committee discussion included:

- Because it is the Legislative Assembly's constitutional responsibility to set the state budget, it should not rely on the executive budget to establish revenue and spending parameters.
- It is important for the Legislative Assembly to clearly identify ongoing and one-time revenues and expenditures and to develop a method to monitor one-time expenditures.
- Concern that the preliminary revenue forecast for the 2009-11 biennium may be overstated due to recent reductions in oil and agriculture commodity prices.
- The state is currently experiencing similar economic conditions to those experienced by the state in 1981. In 1981 the Legislative Assembly was anticipating significant revenues from oil and, as a result, substantially increased spending levels. Because oil prices decreased substantially in the 1980s, state revenues and associated spending levels also were affected. The Legislative Assembly needs to consider the volatility of oil prices and related effect when establishing revenue and spending levels.

The committee requested the Legislative Council staff to prepare a summary preliminary budget report for the 2009-11 biennium identifying preliminary ongoing and one-time revenue and alternative spending levels and major special funds anticipated to be available for the 2009-11 biennium. The report entitled *Budget and Finance Committee Preliminary State Budget Outlook - 2009-11 Biennium* is provided at the end of this report.

FORMAT OF APPROPRIATION BILLS

The committee reviewed information on the possibility of identifying the number of authorized full-time equivalent (FTE) positions in appropriation bills and the possibility of changing the appropriation bill format to identify base level funding, adjustments or enhancements, and the appropriation for an agency within one section of the bill using a three-column format rather than the current format utilizing three sections of the bill.

The committee reviewed the current process of authorizing the number of FTE positions for each agency as follows:

1. The number of authorized FTE positions for each agency is included in supporting documentation submitted to the Legislative Assembly as part of the executive budget recommendation.
2. The number of authorized FTE positions recommended in the executive budget and any legislative changes to the number of FTE positions are identified in the statements of purpose of amendment to appropriation bills and included in postsession Legislative Council reports.
3. New FTE positions are at times identified in other appropriation bills affecting a state agency or in fiscal notes to bills affecting an agency's budget.

4. The Emergency Commission may authorize additional FTE positions for agencies during the interim for the remainder of the current biennium based on agency requests.

If the number of authorized FTE positions for each agency is identified in appropriation bills, the committee anticipates:

1. The agency's primary appropriation bill will include only those FTE positions associated with the funding in that bill. Additional FTE positions for the agency may be authorized in other appropriation bills.
2. The Legislative Assembly will specifically take action amending the appropriation bill to change the number of FTE positions similar to the action taken to change funding levels of an agency.
3. Full-time equivalent positions identified in fiscal notes would not be authorized unless also specifically identified in an appropriation bill.

Regarding the Emergency Commission's role, the committee learned based on agency requests, the Emergency Commission may authorize additional FTE positions during the interim, generally as part of the approval of additional appropriation authority for the agency under NDCC Chapter 54-16. These positions are authorized only for the current biennium and, if the agency wishes to continue the position, the position must be requested by the agency as a new FTE position from the next Legislative Assembly. If the Legislative Assembly includes the number of authorized FTE positions for an agency in the appropriation bill, to continue the current Emergency Commission process, the Emergency Commission would need specific authority to approve additional FTE positions for state agencies.

The committee received testimony from OMB supporting the three-column format for providing agency appropriations within one section of the appropriation bill and identifying the total number of FTE positions for an agency in the appropriation bill.

Committee Recommendations

The committee recommended that pursuant to NDCC Section 54-44.1-07 relating to the form of the budget data, the Budget Section request OMB to prepare the appropriation bills for the 2009 Legislative Assembly in a format that provides:

- Base level funding, adjustments or enhancements, and the appropriation for each agency in a single section using a three-column format.
- The number of FTE positions in total for each agency shown for the base level, adjustments or enhancements, and the authorized (appropriation) level.

The committee recommends House Bill No. 1027 to allow the Budget Section, based on a recommendation of the Emergency Commission, to authorize state agencies to hire FTE positions in addition to those authorized by the Legislative Assembly. The authority provided is effective only for the biennium during which the authority is granted.

DEFERRED MAINTENANCE/ EXTRAORDINARY REPAIRS

The committee reviewed funding and requests for extraordinary repairs and deferred maintenance. The committee learned OMB's definition of a **capital project** is one that involves significant funding amounts. A significant funding amount is defined as more than 2 percent of the agency's total building value, more than $500,000, or more than 50 percent of the agency's capital assets line item requested.

The Office of Management and Budget defines an **extraordinary repair** as relatively large expenditures that benefit more than one operating cycle or period. Extraordinary repairs include all repairs to buildings and infrastructure involving dollar amounts in excess of $5,000 that are nonrecurring in nature and increase the value or service life of the asset.

The committee learned the term **deferred maintenance** is not defined in OMB's budget request guidelines; however, is considered maintenance and repairs that have been deferred or postponed, typically due to budget constraints. Deferred maintenance items are included as part of extraordinary repairs.

The committee learned OMB does not generally monitor extraordinary repair project expenditures of agencies in detail. Although extraordinary repair requests are listed by project for each agency, OMB considers the appropriations for extraordinary repairs a pool to be managed by each agency to address both planned and emergency repairs as they arise. Because extraordinary repair project priorities of agencies change during the biennium based on needs, actual projects completed during a biennium will vary from projects identified in agency budget requests. Because of this, OMB does not compare actual expenditures for specific extraordinary repair projects to budgeted amounts.

The committee received information on the extraordinary repairs funding formula used by OMB. The committee learned the formula is based on 2 percent of the building replacement value for buildings at least five years old. The committee learned the infrastructure formula takes under consideration various components of the infrastructure to identify the appropriate amount of funding that should be provided each biennium.

For the 2007-09 biennium, state agencies and higher education institutions identified a total of $178.7 million of deferred maintenance. The extraordinary repairs funding formula generated the need for $109.5 million for a total of $288.2 million to address all deferred maintenance and extraordinary repair needs during the 2007-09 biennium.

The 2007 Legislative Assembly appropriated $40.4 million, of which $28.8 million is from the general fund for extraordinary repair projects for the 2007-09 biennium.

The committee received information from the University System regarding extraordinary repairs. The University System believes the extraordinary repairs funding formula used by OMB is appropriate but is concerned that the formula has not been fully funded. The University System presented the following schedule

showing the higher education funding that has been provided as a percentage of the formula for recent bienniums:

- 2003-05 biennium - 16.6 percent.
- 2005-07 biennium - 15.1 percent.
- 2007-09 biennium - 30.8 percent.

The committee reviewed options for legislative monitoring of state agency extraordinary repair expenditures. The committee learned the current process for providing funding begins with state agencies requesting funding for extraordinary repairs as part of the state agency budget request process. Agencies identify and prioritize each extraordinary repair project for which funding is being requested. The Office of Management and Budget considers the agency extraordinary repairs request as it develops the executive budget recommendation for each agency. Any change to the extraordinary repairs included as part of the agency's base budget request and any approved extraordinary repairs optional adjustment requests are documented and explained as part of the executive budget recommendation. The executive budget summary report includes a schedule identifying the extraordinary repairs funding approved for each agency in the executive budget recommendation. The executive budget summary report includes a schedule identifying the extraordinary repairs funding approved for each agency in the executive budget recommendation. The funding recommended as part of the executive budget for extraordinary repairs for each agency is included in the capital assets line item of the appropriation bill for the agency along with funding being recommended for capital projects, other capital payments, information technology equipment over $5,000, and other equipment over $5,000. Any legislative changes to extraordinary repairs funding are explained in the statement of purpose of amendment to the appropriation bill and included in the Legislative Council's *Analysis of Legislative Changes to the Executive Budget* report at the end of the legislative session. The report also includes a schedule of legislatively approved funding for extraordinary repairs by project for each agency.

As agencies spend funds from the capital assets line item for extraordinary repair projects, the agency charges the costs to an extraordinary repairs account code under the capital assets line item. Although agencies may internally monitor actual expenditures to budgeted amounts for specific extraordinary repair projects, there is no statewide report generated comparing actual expenditures to budgeted amounts for extraordinary repair projects. The committee considered the following options to provide more information on actual expenditures compared to the legislatively approved amounts for extraordinary repair projects:

1. An interim legislative committee or the Appropriations Committees during a legislative session may request selected agencies to report on the status of these expenditures periodically.
2. An interim legislative committee or the Appropriations Committees during a legislative session may request the Legislative Council staff to prepare a report on the status of these expenditures for all agencies.
3. A statutory change to NDCC Section 54-44.1-06 could be made to require a report on the status of these expenditures for all agencies be included as part of the budget data prepared as part of the executive budget.
4. The Office of Management and Budget could implement a policy that agencies account for these budgeted amounts and expenditures using project reporting or separate account codes for each project within PeopleSoft. The Office of Management and Budget could generate a periodic report comparing budgeted to actual expenditures by project for all agencies that may be provided to interim legislative committees or the Appropriations Committees upon request.
5. The Legislative Assembly could choose to appropriate extraordinary repairs funding in a separate line item. The Office of Management and Budget could implement a policy that agencies account for these budgeted amounts and expenditures using project reporting or separate account codes for each project within PeopleSoft. The Office of Management and Budget could generate a periodic report comparing budgeted to actual expenditures by project for all agencies that may be provided to interim legislative committees or the Appropriations Committees upon request.

OTHER INFORMATION

The committee received other information, including information on previous studies relating to the budgeting process, information on various tax revenue sources and major expenditure items, and state revenue and expenditure levels during the last 10 years.

The committee reviewed information on the common schools trust fund and learned the balance in the common schools trust fund, excluding land and mineral values, on July 1, 2007, totaled $884.7 million. It is anticipated that $76.2 million will be distributed from the tuition trust fund for state aid to schools during the 2007-09 biennium. Of that amount, $66.8 million is from transfers from the common schools trust fund and $9.4 million from fines for violation of state laws.

The committee received information on projected prison inmate population and appropriation trends through 2017. The committee learned that based on historic inmate trends, in the year 2017 North Dakota can anticipate 2,051 inmates compared to 1,439 in November 2007. Regarding general fund appropriation projections based on historic appropriation trends, the committee learned the Department of Corrections and Rehabilitation's general fund budget could total $188 million in the 2015-17 biennium compared to the current general fund appropriation in the 2007-09 biennium of $130.6 million, excluding the $41 million of one-time funding provided for future correctional facility needs during the 2007-09 biennium.

The committee received information on the consumer price index. The committee learned that while the

consumer price index is a measure of the average change over time and prices paid by consumers for goods and services in 87 urban areas in the United States, it does not include the spending of persons living in rural nonmetropolitan areas or farm families and none of the data used to calculate the consumer price index is collected from North Dakota.

The committee received information on state assistance to political subdivisions and revenue sources of schools, cities, counties, and other political subdivisions. The committee learned the average number of mills levied in 2005 for property taxes payable in 2006 was 401.66. Each mill generates approximately $1.7 million statewide. State assistance to political subdivisions for the 2005-07 biennium totaled $1.1 billion or $550 million per year. In terms of mills, this assistance was equivalent to levying 323.5 mills statewide in 2006.

The committee received information on the North Dakota Lottery, lottery proceeds used for compulsive gambling treatment services, casino and tribal contributions for compulsive gambling treatment services, and the history of lottery revenue transferred to the general fund. The committee learned the lottery is anticipated to meet its general fund revenue projection for the 2007-09 biennium of $11,155,000. The committee learned the tribal casinos provide Lutheran Social Services $90,000 per biennium for compulsive gambling treatment and that the North Dakota Indian Gaming Association and Lutheran Social Services are proposing a North Dakota compulsive gambling treatment initiative of $1.2 million for the 2009-11 biennium.

The committee reviewed information relating to the federal REAL ID Act. The committee learned the goal of the REAL ID Act is to enhance the security, integrity, and protection of licensing and identification systems in the United States. Compliance with REAL ID standards is voluntary; however, if a state does not comply it would be required to print "not REAL ID compliant" on all cards issued. The Department of Transportation requested and was granted an extension for REAL ID Act compliance through December 2009. The extension allows North Dakota citizens to continue to use current driver's licenses to board planes and enter federal facilities. North Dakota will need an additional extension to allow the North Dakota driver's license to continue to be used for these purposes until May 2011. The department has attempted to keep all options available and will be seeking direction from the 2009 Legislative Assembly relating to compliance with the REAL ID Act.

The committee received information on the Northern Tier Network, including information on a proposal by the University System to allow expansion of the use of the network and concerns expressed by representatives of private telecommunications companies regarding expansion of the network.

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 Senators Ray Holmberg (Chairman), Bill Bowman, Randel Christmann, Tom Fischer, Tony Grindberg, Ralph L. Kilzer, Aaron Krauter, Karen K. Krebsbach, Elroy N. Lindaas, Tim Mathern, Carolyn Nelson, David O'Connell, Larry J. Robinson, Tom Seymour, Bob Stenehjem, Harvey D. Tallackson, and Rich Wardner and Representatives Ole Aarsvold, Larry Bellew, Rick Berg, Merle Boucher, Ron Carlisle, Al Carlson, Jeff Delzer, Mary Ekstrom, Eliot Glassheim, Pam Gulleson, Kathy Hawken, Keith Kempenich, James Kerzman, Matthew M. Klein, Gary Kreidt, Joe Kroeber, Bob Martinson, Ralph Metcalf, David Monson, Jon Nelson, Kenton Onstad, Chet Pollert, Bob Skarphol, Ken Svedjan, Blair Thoreson, Francis J. Wald, Alon Wieland, and Clark Williams.

The committee submitted this report to the Legislative Council at the biennial meeting of the Council in November 2008. The Council accepted the report for submission to the 61st Legislative Assembly.

The following duties, assigned to the Budget Section by law, were acted on during the 2007-08 interim:

1. **Tobacco settlement funds (Section 54-44-04(23))** - This section provides that the director of the Office of Management and Budget report to the Budget Section on the status of tobacco settlement funds and related information.
2. **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 where more uniform and improved fiscal procedures are desirable.
   c. Any expenditures or governmental activities contrary to law or legislative intent.
   d. The use of state funds to provide bonuses, cash incentive awards, or temporary salary adjustments for state employees.
3. **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. 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 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.
4. **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.
5. **Designation of a center of excellence (Section 15-69-02, Section 14 of House Bill No. 1018 (2007), and Section 4 of Senate Bill No. 2032 (2005))** - These sections provide that designation of a center of excellence occurs upon State Board of Higher Education, North Dakota Economic Development Foundation, Emergency Commission, and Budget Section approval of a Centers of Excellence Commission funding award recommendation; in considering whether to designate a center of excellence, the board, the foundation, and the Budget Section may not modify the commission recommendation; and the Budget Section may not take action on a commission funding award recommendation until the Emergency Commission reviews the commission recommendation and makes a recommendation to the Budget Section (Section 4 of Senate Bill No. 2032 - effective July 1, 2005, through July 31, 2011). In addition, Section 14 of House Bill No. 1018 provides that up to $10 million is available for Budget Section approval at its first meeting after September 1, 2007, and up to $5 million and any unawarded funds remaining from the $10 million allocation are available for Budget Section approval at its first meeting after September 1, 2008, for providing funding to centers of excellence (Section 14 of House Bill No. 1018 - effective July 1, 2007).
6. **Office of Management and Budget borrowing $5 million from the Bank of North Dakota for centers of excellence (Section 15 of House Bill No. 1018 (2007))** - This section provides that, as requested by the Centers of Excellence Commission and subject to Emergency Commission and Budget Section approval, the Office of Management and Budget borrow up to $5 million from the Bank of North Dakota for providing funding to centers of excellence (effective July 1, 2007).

7. **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, excluding 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.
8. **Change or expand state building construction projects (Section 48-01.2-25)** - 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.
9. **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.
10. **Status of the State Board of Agricultural Research and Education (Section 4-05.1-19(10))** - This section requires the State Board of Agricultural Research and Education to present a status report on its activities to the Budget Section.
11. **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.
12. **Department of Human Services transfers between line items and between subdivisions in excess of $50,000 (Section 4 of Senate Bill No. 2012 (2007))** - This section requires the Department of Human Services to report to the Budget Section after June 30, 2008, on any transfers in excess of $50,000 made during the 2007-09 biennium between line items within each subdivision and between subdivisions (effective July 1, 2007).
13. **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.
14. **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.
15. **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.
16. **Statement from ethanol plants in operation before July 1, 1995, that received production incentives (Section 17-02-01)** - This section requires any North Dakota ethanol plant in operation before July 1, 1995, 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 (effective July 1, 2005).
17. **Report identifying every state agency that has not submitted a claim for property belonging to that agency (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.
18. **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.
19. **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.

20. **Acceptance and expenditure of more than $50,000 of federal funds which 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 which 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 which were not appropriated and the Legislative Assembly has not indicated an intent to reject the money.
21. **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.
22. **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.
23. **Report on the status of the Medicaid management information system (Section 3 of Senate Bill No. 2024 (2007))** - This section requires the Department of Human Services to report to the Budget Section on the status of the Medicaid management information system computer project (effective February 14, 2007).
24. **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 or Legislative Assembly 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.
25. **Periodic reports on the status of the construction of a new Crime Laboratory (Section 13 of Senate Bill No. 2003 (2007))** - This section requires the Attorney General to periodically report to the Budget Section on the status of the construction of a new Crime Laboratory during the 2007-09 biennium (effective July 1, 2007).
26. **Annual report on the state meat inspection program (Section 13 of Senate Bill No. 2009 (2007))** - This section requires the Agriculture Commissioner to report annually to the Budget Section regarding the revenues and expenditures of the state meat inspection program (effective July 1, 2007).
27. **Annual report on the endangered species program (Section 14 of Senate Bill No. 2009 (2007))** - This section requires the Agriculture Commissioner to report annually to the Budget Section regarding the status of the endangered species program (effective July 1, 2007).
28. **Quarterly reports on the status of performance audit recommendations (Section 5 of Senate Bill No. 2021 (2007))** - This section requires Workforce Safety and Insurance to report quarterly to the Budget Section regarding the agency's status of implementing the performance audit recommendations of the State Auditor (effective July 1, 2007).

29. **Annual audits from center of excellence-awarded funds under Chapter 15-69 (Section 15-69-05 and Section 4 of Senate Bill No. 2032 (2005))** - This section requires that a center of excellence that is awarded funds under Chapter 15-69 provide an annual audit to the Budget Section on the funds distributed to the center until the completion of four years following the final distribution of funds (effective July 1, 2005, through July 31, 2011).
30. **Periodic reports on the status of the Veterans Home construction project (Section 4 of Senate Bill No. 2418 (2007))** - This section requires the Veterans Home to report periodically to the Budget Section regarding the status of the Veterans Home construction project (effective July 1, 2007).
31. **Consider a correctional facility concept (Section 10 of House Bill No. 1015 (2007))** - This section provides that the Budget Section approve or reject the correctional facility concept authorized by the Emergency Commission from the three concepts forwarded to the commission by the Legislative Council's Correctional Facility Review Committee. (The Legislative Council at its June 6, 2007, meeting directed, as a result of the Attorney General's opinion on June 6, 2007, that any recommendation from the Emergency Commission regarding facility concepts be received by the Budget Section for informational purposes only rather than for approval or rejection.)
32. **Report regarding the status of the grandstand construction on the state fairgrounds (Section 4 of House Bill No. 1009 (2007))** - This section requires the State Fair Association to report to the Budget Section before July 1, 2008, regarding construction of a new grandstand on the state fairgrounds, including the status of developing a business plan and the progress of fundraising efforts (effective July 1, 2007).
33. **Space, operational, and staffing plan (Section 17 of House Bill No. 1015 (2007))** - This section requires the Department of Corrections and Rehabilitation to provide a space, operational, and staffing plan at the first Budget Section meeting after March 1, 2008, regarding the State Penitentiary and the James River Correctional Center (effective July 1, 2007).
34. **Project startup report and consideration of inmate medical system (Section 12 of House Bill No. 1015 (2007))** - This section requires the Department of Corrections and Rehabilitation to provide a project startup report and receive Budget Section approval prior to implementing the inmate medical system. The report is to identify benefits to be achieved, estimated implementation costs, a milestone schedule, and project risks (effective July 1, 2007).
35. **Report on facility agreement governing metrology services (Section 11 of Senate Bill No. 2008 (2007))** - This section requires the Public Service Commission and the Facility Management Division of the Office of Management and Budget to report to the Budget Section by July 1, 2008, on the facility use agreement governing metrology services conducted within the current metrology facility and the future of the metrology laboratory (effective July 1, 2007).
36. **Federal funds report** - Receive a report from the Legislative Council staff in the fall of 2008 on the status of the state's federal funds receipts for the current biennium and estimated federal funds receipts for the subsequent biennium.

The following duties, assigned to the Budget Section by law or by Legislative Council directive, are scheduled to be addressed by the Budget Section at its December 2008 meeting:

1. **Receive report on specified commodities and services exempted from the procurement requirements of Chapter 54-44.4** - 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 (December 2008).
3. **Report on revenues and expenditures of the abandoned oil and gas well plugging and site reclamation fund; the geophysical, geothermal, subsurface minerals, and coal exploration fund; and the geologic data preservation fund (Section 7 of House Bill No. 1060 (2007))** - This section provides that the Industrial Commission report to the Budget Section on the revenues and expenditures of the abandoned oil and gas well plugging and site reclamation fund; the geophysical, geothermal, subsurface minerals, and coal exploration fund; and the geologic data preservation fund for the 2007-09 biennium (effective April 13, 2007).
4. **Report on recruitment and retention of hunters (Section 7 of Senate Bill No. 2017 (2007))** - This section requires the Game and Fish Department to report to the Budget Section by December 31, 2008, regarding the department's findings as a result of its study of the recruitment and retention of hunters in North Dakota (effective July 1, 2007).

The following duties, assigned to the Budget Section by law or by Legislative Council directive, did not require action by the Budget Section during the 2007-08 interim:

1. **Capital improvements 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 (approximately $114,545 was available for the 2007-09 biennium).

2. **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.
3. **Reduction of the game and fish fund balance below $15 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 $15 million, unless otherwise authorized by the Budget Section.
4. **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 may provide services under contract with a governmental or nongovernmental person.
5. **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.
6. **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.
7. **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.
8. **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.
9. **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.
10. **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 cashflow financing, subject to certain limitations, must be approved by the Budget Section.
11. **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.
12. **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 (effective July 1, 2003, through June 30, 2005).
13. **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.
14. **Budget reduction due to 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.
15. **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.
16. **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.

17. **Federal block grant hearings (House Concurrent Resolution No. 3001 (2007))** - This resolution authorizes the Budget Section, through September 30, 2009, to hold any required legislative hearings for federal block grants.
18. **Acceptance of federal funds for a specific purpose or program which were not appropriated (Section 54-16-04.1(4) and Section 1 of House Bill No. 1278 (2005))** - This section provides that upon approval by the Emergency Commission and Budget Section, the state may accept any federal funds made available to the state which are not for a specific purpose or program and which are not required to be spent prior to the next regular legislative session for deposit into a special fund until the Legislative Assembly appropriates the funds (effective August 1, 2005).
19. **Report on reductions made in homestead property income tax credit (Section 57-38-01.29 and Section 6 of Senate Bill No. 2032 (2007))** - This section requires the Tax Commissioner to report to the Budget Section, for review, any adjustments in the homestead property income tax credit (effective August 1, 2007).
20. **Consider request to reduce the commercial property income tax credit (Section 57-38-01.30 and Section 7 of Senate Bill No. 2032 (2007))** - This section provides that Budget Section approval is required for any adjustments made by the Tax Commissioner to the commercial property income tax credit (effective August 1, 2007).
21. **Consider request for annual tuition increase of more than 5 percent (Section 18 of House Bill No. 1003 (2007))** - This section provides that the State Board of Higher Education may seek Budget Section approval to increase annual tuition by more than 5 percent for each year for students attending institutions under the control of the board for the 2007-08 and 2008-09 academic years (effective July 1, 2007).
22. **Consider request for Secretary of State to borrow $2.92 million from the Bank of North Dakota for implementation of the North Dakota business development engine information technology project (Section 18 of House Bill No. 1018 (2007))** - This section provides that upon Budget Section approval, the Secretary of State may borrow up to $2.92 million from the Bank of North Dakota to implement the North Dakota business development engine information technology project (effective July 1, 2007).
23. **Consider request for Department of Human Services to borrow $3.5 million from the Bank of North Dakota for medical assistance grants (Section 5 of Senate Bill No. 2012 (2007))** - This section provides that, upon Budget Section approval, the Department of Human Services may borrow up to $3.5 million from the Bank of North Dakota for providing the state matching share of additional medical assistance grants for developmental disabilities services for the 2007-09 biennium (effective July 1, 2007).
24. **Consider request for Department of Human Services to use state contingency funds (Section 4 of Senate Bill No. 2024 (2007))** - This section provides that the Department of Human Services obtain Budget Section approval prior to obligation or expenditure of funds related to a project change or other occurrence that requires the use of $500,000 or more of state contingency funds for the Medicaid management information system computer project (effective February 14, 2007).
25. **Conduct budget tours and receive budget tour group reports** - Traditionally the Budget Section has conducted budget tours of state facilities and institutions or assigned the budget tours to other interim committees and received reports from the committees on the budget tours conducted.

OFFICE OF MANAGEMENT AND BUDGET

Final 2005-07 Biennium General Fund Revenues and Expenditures

The Budget Section received a report from the Office of Management and Budget on the final status of the general fund for the 2005-07 biennium:

Unobligated general fund balance - July 1, 2005	$68,015,056
Add	
General fund collections through June 30, 2007	2,317,659,171
General fund turnback for the 2005-07 biennium	13,069,134
Total general fund revenue for the 2005-07 biennium	$2,398,743,361
Less	
2005-07 biennium general fund appropriations	1,989,452,623
Supplemental appropriations (Senate Bill No. 2023 (2007))	11,084,451
Transfer to the budget stabilization fund	100,527,369
Cash certifications, adjustments, and changes in authorized carryover	2,137,742
Ending general fund balance - June 30, 2007	$295,541,176

The Legislative Assembly approved House Bill No. 1429 (2007), which provided, in lieu of other transfers, that $100,527,369 be transferred from the ending 2005-07 biennium general fund balance to provide for a total of $200,000,000 in the budget stabilization fund for the biennium beginning July 1, 2007, and ending June 30, 2009. The Office of Management and Budget reported $100,527,369 was transferred from the general fund to the budget

stabilization fund at the end of the 2005-07 biennium. Pursuant to NDCC Section 54-27.2-01 and effective July 1, 2009, the maximum balance allowed in the fund will be increased from 5 percent to 10 percent of the general fund budget as approved by the most recently adjourned Legislative Assembly.

2005-07 Biennium General Fund Deficiency Appropriations and General Fund Turnback

The Budget Section received a report from the Office of Management and Budget on the 2005-07 biennium agency deficiency appropriation amounts. Deficiency appropriations for the 2005-07 biennium totaled approximately $11 million. Agencies with the largest deficiency appropriations included the Department of Corrections and Rehabilitation ($4,069,832) and the Adjutant General ($4,100,000).

The Budget Section received a report from the Office of Management and Budget on the 2005-07 biennium agency unspent general fund appropriation amounts (turnback). Unspent general fund appropriations for the 2005-07 biennium totaled approximately $13 million. Agencies with the largest amounts of unspent general fund appropriations included the Department of Human Services ($3,813,646), the judicial branch ($2,101,220), and the Department of Corrections and Rehabilitation Youth Correctional Center and Juvenile Services Division ($1,031,512).

Status of the 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 2007-09 biennium. The following is a summary of the status of the state general fund, based on actual revenue collections through August 2008, and reflecting the July 2008 revised revenue forecast for the remainder of the 2007-09 biennium:

Unobligated general fund balance - July 1, 2007		$295,541,176
Add		
General fund collections through August 2008	$1,535,043,766	
Forecasted general fund revenue for the remainder of the 2007-09 biennium (based on the July 2008 revised forecast)	1,077,697,548	
Total estimated general fund revenue for the 2007-09 biennium		$2,612,741,314
Total available		$2,908,282,490
Less		
2007-09 biennium general fund ongoing appropriations	$2,317,447,307	
2007-09 biennium general fund one-time appropriations	139,526,649	
Contingent appropriation (Section 50 of Senate Bill No. 2200 (2007))	5,000,000	
Total appropriations		$2,461,973,956
Estimated general fund balance - June 30, 2009 ($427,652,355 more than the legislative estimate of $18,656,179)		$446,308,534

The Office of Management and Budget's July 2008 revised revenue forecast for the 2007-09 biennium anticipates general fund revenue will total $2.5 billion, $363 million more than the April 2007 legislative forecast. The Office of Management and Budget's July 2008 preliminary 2009-11 biennium revenue forecast anticipates total general fund revenue of $2.7 billion for the 2009-11 biennium, $202 million more than the 2007-09 biennium revised forecast.

Status of the Permanent Oil Tax Trust Fund

At each Budget Section meeting, a representative of the Office of Management and Budget reviewed the status of the permanent oil tax trust fund and revenue collections for the 2007-09 biennium. The following is a summary of the status of the permanent oil tax trust fund, based on actual revenue collections through August 2008, and reflecting the July 2008 revised revenue forecast for the remainder of the 2007-09 biennium:

Beginning permanent oil tax trust fund balance - July 1, 2007	$143,270,662
Add	
Revenue collections through August 2008	275,158,783
Forecasted revenues for the remainder of the 2007-09 biennium (based on revised forecast assumptions for oil price and production)	358,871,552
Total estimated permanent oil tax trust funds available for the 2007-09 biennium	$777,300,997
Less expenditures and transfers	145,716,541
Estimated permanent oil tax trust fund balance - June 30, 2009 ($494.6 million more than the $137.0 million projected by the 2007 Legislative Assembly)	$631,584,456

The July 2008 revenue forecast anticipates transfers to the permanent oil tax trust fund to total $625 million during the 2007-09 biennium and $666 million during the 2009-11 biennium.

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 September 2008, approximately $58.9 million had been received for the 2007-08 interim by the state and deposited in the tobacco settlement trust fund. The state receives annual payments in April and the proceeds have been allocated 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%)	$5,889,522
Common schools trust fund (45%)	26,502,848
Water development trust fund (45%)	26,502,848
Total transfers from the tobacco settlement trust fund	$58,895,218

The Office of Management and Budget reported revenues and expenditures in the trust funds from

December 1, 1999, through August 31, 2008, and balances of the trust funds were as follows:

Community health trust fund	
Deposits	$23,315,645
Expenditures	21,057,772
August 31, 2008, balance	$2,257,873
Water development trust fund	
Deposits	$104,920,399
Expenditures	93,158,552
August 31, 2008, balance	$11,761,847

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:

Agency	Amount	Reason
Workforce Safety and Insurance	$823.00	Retroactive pay for additional workload due to vacancies
Information Technology Department	$2,500.00	Retroactive pay for five-month temporary increase for employee who served as interim Chief Information Officer
Department of Transportation	$2,442.59	Retroactive pay for reinstated employee
Office of Management and Budget	$1,000.00	Retroactive pay for additional workload due to vacancies and implementation of new P-card vendor contract
Department of Human Services	$15,414.36	Severance pay
Department of Human Services	$13,721.13	Severance pay
Department of Transportation	$10,000.00	Severance pay
Department of Commerce	$500.00	Temporary increase for workload increase due to vacancy of director of Division of Economic Development and Finance
Department of Commerce	$4,250.00	Temporary increase for workload increase due to vacancy of vice president of research
Department of Commerce	$2,500.00	Temporary increase for workload increase due to vacancy in Division of Community Services
Information Technology Department	$841.19	Temporary increase for additional workload due to the Family and Medical Leave Act
Office of Management and Budget	$1,000.00	Retroactive pay for two employees for additional workload due to custodial vacancies throughout the 2005-07 biennium
Department of Human Services	$8,820.00	Settlement agreement
Department of Commerce	$500.00	Temporary increase due to vacancy in Division of Community Services
Department of Commerce	$1,125.00	Temporary increase due to vacancy of vice president of research
Commission on Legal Counsel for Indigents	$2,000.00	Pay for an extra project in addition to normal duties
Workforce Safety and Insurance	$500.00	Retroactive pay for additional workload due to vacancy in accounts payable
Information Technology Department	$1,245.00	Additional pay for part-time employee who worked additional hours during vacancy
Veterans Home	$3,403.00	Settlement agreement
Workforce Safety and Insurance	$127,848.00	Settlement agreement
Job Service North Dakota	$77,300.00	Severance packages for 14 individuals whose jobs were eliminated when the job opportunities and basic skills program was terminated
Department of Transportation	$2,555.00	Retroactive pay for additional workload
Department of Mineral Resources	$33,500.00	Performance bonuses for 44 individuals which exceeded the limit of 12 full-time equivalent (FTE) positions or 25 percent of employees
Department of Transportation	$26,023.00	Overspent appropriation authority in the Driver and Vehicle Services program in the 2005-07 biennium
Veterans Home	$3,544.00	Settlement agreement
Workforce Safety and Insurance	$23,569.00	Severance package
Workforce Safety and Insurance	$15,920.00	Severance package
Parks and Recreation Department	$8,512.00	Settlement agreement
Department of Transportation	$2,460.00	Settlement agreement
Attorney General's office	$44,432.00	Payout of accumulated annual pay
North Dakota Vision Services - School for the Blind	$3,726.00	Additional work in June for four teachers outside of their nine-month teaching contract
State Fair Association	$8,764.00	Additional work for three individuals during transition to new State Fair Association manager
Department of Commerce	$1,625.00	Temporary additional work for a special project
Department of Corrections and Rehabilitation - Youth Correctional Center	$750.00	Additional work in August for one teacher at the Youth Correctional Center outside of her teaching contract
State Auditor's office	$14,000.00	Performance bonuses are limited by statute to 13, but 14 individuals received performance bonuses in fiscal year 2008.

2009-11 Biennium Budget Form Changes

The Budget Section reviewed information on the form of the budget data and appropriation bill format and changes to the appropriation bill format for the 2009 legislative session as recommended by the Budget and Finance Committee.

Pursuant to NDCC Section 54-44.1-07, the Office of Management and Budget reported it has expanded the budget changes report to identify one-time items that have been removed and one-time items being requested by agencies for the 2009-11 biennium. One-time funding items recommended in the executive budget will also be identified.

Budget Data Recommendation

Pursuant to NDCC Section 54-44.1-07, the Budget Section recommended changes to the budget data by requesting the Office of Management and Budget to:

1. Prepare the appropriation bills for introduction to the Legislative Assembly in a format that provides:
   a. Base level funding, adjustments or enhancements, and the appropriation for each agency in a single section using a three-column format; and
   b. The number of FTE positions in total for each agency shown for the base level, adjustments or enhancements, and the authorized (appropriation) level.
2. Prepare the appropriation bills for introduction to the 2009 Legislative Assembly by including a separate line item for deferred maintenance funding and that each agency maintain detailed records of amounts spent from this line item for deferred maintenance and for any extraordinary repairs or other purposes.

Status of the Risk Management Workers' Compensation Program

The Office of Management and Budget presented information to the Budget Section regarding the status of the risk management workers' compensation program pursuant to NDCC Section 65-04-03.1(5). Legislation in 2001 established a single workers' compensation account for all state entities. The Risk Management Division of the Office of Management and Budget administers the program. The Office of Management and Budget reported for coverage periods beginning July 1, 2001, the Risk Management Division entered deductible contracts with Workforce Safety and Insurance for 143 consolidated accounts. The deductible amount selected was $100,000 per claim with a $5 million aggregate stop. Results for the seven coverage years from July 1, 2001, through September 15, 2008, are:

Nonconsolidated guaranteed cost program premium and assessments		$29,782,116
Risk Management Division deductible premium paid to Workforce Safety and Insurance	$10,872,313	
Risk Management Division-paid losses through September 15, 2008	8,973,278	
Risk Management Division pending losses (reserves)	1,723,469	
Risk Management Division combined deductible premium and losses		$21,569,060
Estimated savings for a seven-year period		$8,213,056

The Risk Management Division has implemented the following programs to allow agencies to benefit from the savings and effective risk management strategies:

- Discount dollars program, which relates to the implementation of safety programs, totaled $2 million.
- Dividend dollar program, which relates to an agency's loss history, totaled $684,000.

HIGHER EDUCATION

Capital Projects

During the 2007-08 interim, the Budget Section received requests relating to the following North Dakota University System capital projects:

- **Minot State University - Dome floor replacement project** - Pursuant to NDCC Section 48-02-20, the Budget Section approved Minot State University's request to increase spending authority for the dome floor replacement project from $387,000 to $431,000.
- **State College of Science - Steamline project** - Pursuant to NDCC Section 48-02-20, the Budget Section approved State College of Science's request to change the scope of the steamline project to include replacement of water and sewerlines.
- **University of North Dakota - Harrington Hall (Jodsaas Center)** - Pursuant to NDCC Section 15-10-12.1, the Budget Section approved University of North Dakota's request to accept and spend $1.3 million in donated funds for an addition to Harrington Hall. At a later meeting, the Budget Section was informed that the University of North Dakota Alumni Foundation will issue bonds to finance construction of the project and create an endowment with the donated funds that will meet bond payment obligations and provide for other foundation priorities.
- **University of North Dakota - President's house** - Pursuant to NDCC Section 15-10-12.1, the Budget Section approved University of North Dakota's request to accept from the University of North Dakota Alumni Foundation a new president's house at a construction cost of $900,000. At a later meeting, the Budget Section was informed that the University of North Dakota Alumni Foundation will issue bonds to finance construction of the project and create an endowment with the donated funds that will meet bond payment obligations and provide for other foundation priorities.
- **North Dakota State University - President's house** - Pursuant to NDCC Section 15-10-12.1, the Budget Section approved North Dakota State University's request to accept from the North Dakota State University Development Foundation a new president's house at a construction cost of $900,000. At a later meeting, the Budget Section was informed that the North Dakota State University Development Foundation will issue bonds to finance construction of the project and create an endowment with the donated funds that will meet bond payment obligations and provide for other foundation priorities.
- **North Dakota State University - Material handling facility** - Pursuant to NDCC Section 48-01.2-25, the Budget Section approved North Dakota State University's request to increase the scope of its material handling facility project from

$3.5 million to $4 million for Phase 1 of the project.

- **Dickinson State University - Whitney Stadium** - Pursuant to NDCC Section 48-01.2-25, the Budget Section approved Dickinson State University's request to increase the scope of the Whitney Stadium project from $8 million to $16 million. At a later meeting, the Budget Section learned the State Board of Higher Education (representing Dickinson State University), the Dickinson Public School District, the Dickinson Parks and Recreation Board, and the city of Dickinson entered into a joint powers agreement and that the city of Dickinson plans to contribute $6 million to the project over a five- to seven-year period.
- **North Dakota State University - Living Learning Residence Hall West and Ceres Hall** - Pursuant to NDCC Section 48-01.2-25, the Budget Section approved North Dakota State University's request to increase the scope of the total project authorization for the Living Learning Residence Hall West and Ceres Hall from $12 million to $12.4 million.
- **North Dakota State University - Dickinson Research Extension Center - Manning Ranch site** - Pursuant to NDCC Section 48-01.2-25, the Budget Section approved North Dakota State University's request to increase the scope of the project authorization for the waste management system at the Dickinson Research Extension Center - Manning Ranch site from $351,000 to $450,000.
- **Bismarck State College - Schafer Hall** - Pursuant to NDCC Section 48-01.2-25, the Budget Section approved Bismarck State College's request to increase the scope of the project authorization for the Schafer Hall renovation project from $543,000 to $800,000.
- **Williston State College - Service rig project** - Pursuant to NDCC Section 48-01.2-25, the Budget Section approved Williston State College's request to increase the scope of the project authorization for the service rig project from $700,000 to $810,000.
- **University of North Dakota - Human simulator laboratory facility** - Pursuant to NDCC Section 15-10-12.1, the Budget Section approved University of North Dakota's request to accept from the University of North Dakota Alumni Foundation a human simulator laboratory facility with an estimated value of $1.5 million.

Local Funds - Higher Education Construction Projects

The Budget Section received a report from the North Dakota University System on the sources of local funds received for construction projects of entities under the State Board of Higher Education for the 2005-07 biennium pursuant to NDCC Section 15-10-12.3. The University System reported three state-funded projects were authorized for the 2005-07 biennium requiring a local match. The projects were located at the North Dakota State University Main Research Center and the North Central and Central Grasslands Research Centers. The projects at the Main Research Center and the North Central Research Center were not completed in the 2005-07 biennium and were continued into the 2007-09 biennium. The Central Grasslands Research Center project was completed within the overall appropriation authority and provided the local match requirement.

STATE BOARD OF AGRICULTURAL RESEARCH AND EDUCATION STATUS REPORT

The State Board of Agricultural Research and Education provided information to the Budget Section regarding the status of the board pursuant to NDCC Section 4-05.1-19(10). The board reported agriculture continues to be a major factor in North Dakota's economy and is the state's No. 1 industry. The board is in the process of analyzing the needs of North Dakota's agricultural community and developing strategies to generate solutions to these needs. The board distributed a list of plant improvement project requests totaling $3.5 million and a list of deferred maintenance project requests totaling $4.4 million for the Agricultural Experiment Station.

INFORMATION TECHNOLOGY DEPARTMENT

Annual Reports

Pursuant to NDCC Section 54-59-19, the Budget Section received the Information Technology Department 2006-07 and 2007-08 annual reports. The Information Technology Department reported it has been concentrating on customer service for the last three years and the focus of its fiscal year 2008 report is on measuring outcomes. In fiscal year 2008 the department reported, based on customer surveys, the department is a trusted business partner 94.9 percent of the time and the preferred information technology provider 86.2 percent of the time. The Information Technology Department logged 53,738 incidents over the last year and users indicated that, in 99.8 percent of these incidents, the department provided a positive customer experience. The department reported billings for fiscal year 2008 totaled $41.8 million, $2.8 million more than fiscal year 2007 and $7.8 million more than fiscal year 2006. The majority of revenue is generated from computer hosting and software development service fees. The department reported experiencing challenges in recruiting and retaining employees with a turnover rate of 6.8 percent. The department's goal is a 4 percent to 6 percent turnover rate. The department reported the majority of its service rates are competitive with surrounding states.

Loan Request

Pursuant to NDCC Section 54-59-05(4), the Budget Section received a request from the Information Technology Department for approval to borrow up to

$6 million for the purchase of computer hardware and software and the associated implementation services necessary to host the Department of Human Services' Medicaid management information system applications. Section 54-59-05 provides that, with the approval of the Legislative Assembly or the Budget Section, the Information Technology Department may finance the purchase of hardware and software provided the financing agreement does not exceed five years and does not exceed 7.5 percent of the amount appropriated to the department during the biennium. The department reported, based on its 2007-09 biennium appropriation of $124,907,776, the purchase does not exceed the 7.5 percent limit of $9,368,083. The 2007 Legislative Assembly provided the department with $6,017,443 of special funds spending authority for procuring the hardware, software, and related services for the Medicaid management information system project.

The Budget Section approved, pursuant to NDCC Section 54-59-05(4), the Information Technology Department's request for approval to borrow up to $6 million for the purchase of computer hardware and software and the associated implementation services necessary to host the Department of Human Services' Medicaid management information system applications.

DEPARTMENT OF HUMAN SERVICES

Transfers in Excess of $50,000

Pursuant to Section 4 of Senate Bill No. 2012 (2007), the Budget Section received a report from the Department of Human Services regarding transfers the department made between line items and between subdivisions of Senate Bill No. 2012 in excess of $50,000. The department reported four line item transfers made through June 30, 2008, were to:

1. Realign the distribution of the social service block grant funding to provide more efficient reporting to the grantor agency - $2,050,532.
2. Move Projects for Assistance in Transition from Homelessness grant funding from the Northwest Human Service Center to the Southeast Human Service Center to address changes in need - $50,541.
3. Realign information technology staff to ensure technology remains centralized - $172,193.
4. Realign the records management function within the Information Technology Services Division because the work performed supported the entire department - $75,167.

Status of Medicaid Management Information System

Pursuant to Section 3 of Senate Bill No. 2024 (2007), the Budget Section received periodic reports from the Department of Human Services regarding the status of the Medicaid management information system computer project. The Budget Section learned the requirements phase of the project is complete and the effort in the 2007-09 biennium has been focused on Phase 2 planning, hardware/software configuration and environment setup, and documentation of the North Dakota-specific claim edits and audits. The Department of Human Services has finalized the contracts for the decision support system and the independent verification and validation. The cost of the independent verification and validation vendor is estimated to be 8 percent to 12 percent of the total project cost. The contractor will review business processes and the system design, ensure the traceability of requirements, and oversee testing. ACS State Healthcare, LLC (ACS) has been developing the "Enterprise" Medicaid management information system for the state of New Hampshire and, as North Dakota would be using the same Enterprise model, the North Dakota project has been dependent on ACS's progress in New Hampshire. Due to delays in the New Hampshire project, the department met with ACS in April 2008 to discuss how to "delink" North Dakota's project from the New Hampshire project to ensure North Dakota would not be negatively impacted by the delay. The department does not intend to compromise the quality of the solution or the budget of the project if the project does not meet its time schedule. The department has expressed its concern regarding delays in the product development to the developer. While the department has been negotiating a revised schedule with ACS, the project team has continued to proceed with system design specifications. Negotiations with ACS are primarily focused on the postdesign phases of the project which are highly dependent on the timely delivery of an ACS product that meets North Dakota requirements. The Budget Section received the following project funding summary:

Description	Budget	Spent Through August 2008	Remaining
General fund	$3,643,133	$1,055,855	$2,587,278
Federal funds	55,218,418	15,897,673	39,320,745
Other funds	3,667,820	1,007,597	2,660,223
Total project	$62,529,371	$17,961,125	$44,568,246

Enhancement of County Eligibility Systems

The Budget Section received information on the enhancement of county eligibility systems. The county eligibility systems are separate and independent from the Medicaid management information system. County eligibility workers use the following four distinct information systems:

1. Vision - For determining temporary assistance for needy families and certain categories of Medicaid eligibility.
2. Technical eligibility computer system - For determining food stamps and the remaining categories of Medicaid eligibility.
3. Low-income home energy assistance program - For determining low-income fuel assistance eligibility.
4. Child care eligibility determination system.

The effort and expense associated with consolidating the four systems would be extensive and were not included in the Department of Human Services' 2007-09 biennium budget. The department issued a request for information during the 2007-08 interim to determine the cost of consolidating the four systems and conducted a

state-level market assessment to better understand recent procurements in other states. The assessment will allow the department to formulate a budget request for consideration by the 2009 Legislative Assembly.

Status of Medicaid Reimbursements

The Budget Section received information on the status of Medicaid reimbursements. The Department of Human Services experienced a Medicaid claims backlog that had been above the normal level since the spring of 2006. The department normally has between 20,000 claims and 25,000 claims in suspense. In October 2007 the department had approximately 90,000 claims in suspense.

The high number of claims in backlog was primarily due to two federal changes. Medicare changed the process by which claims are submitted for individuals who are eligible for both Medicare and Medicaid. The change led to delays in the receipt and processing of Medicare/Medicaid claims. The second change was the requirement that the National Provider Identification be in production in May 2007, a significant change to the system that resulted in thousands of claims being suspended or rejected.

The Medical Services Division authorized overtime for staff for over a year in an effort to process claims on a more timely basis. The division began mandatory overtime in September 2007 when it became evident that voluntary overtime was not reducing the backlog effectively. The overtime resulted in the processing of additional claims; however, the large volume of claims in suspense warranted the addition of six temporary staff. The department monitored the backlog on a weekly basis and issued payouts to providers until the backlog was reduced. By June 2008 the number of claims in suspense had been reduced to approximately 30,000 claims, which is near average.

Capital Projects

State Hospital

The Budget Section received a report from the State Hospital regarding the sexual offender unit addition capital project. The State Hospital reported that cost estimates for the project were more than estimated and, due to less demand for sexual offender treatment services, the State Hospital no longer believes the sexual offender unit addition is needed; therefore, the State Hospital requested to use the $3.1 million from the general fund appropriated for the project for other capital improvement needs at the State Hospital.

The Budget Section approved, pursuant to NDCC Section 48-01.2-25, the State Hospital's request to change the sexual offender unit addition capital project but limited the use of the funds to $1,751,973 of the $3,100,000 authorized by the 2007 Legislative Assembly for the State Hospital sexual offender unit addition for the electrical distribution project, a security fence, and architectural and engineering fees.

DEPARTMENT OF COMMERCE

Annual Audits of Renaissance Fund Organizations

The Department of Commerce reported on the annual audits of renaissance fund organizations pursuant to NDCC Section 40-63-07(9). The department reported 43 renaissance zone cities, of which 7 have renaissance fund organizations. The Legislative Assembly approved the following maximum aggregate tax credits for investments in a renaissance fund organization:

- $2.5 million - 1999 Legislative Assembly.
- $1 million - 2001 Legislative Assembly.
- $1.5 million - 2003 Legislative Assembly.

Of the $2.5 million in renaissance credits approved by the 1999 Legislative Assembly, $591,250 remain but are unavailable because of pending investments. Of the $2.5 million in renaissance credits approved by the 2001 and 2003 Legislative Assemblies, $682,500 remain available. The Budget Section learned the independent auditor's reports of the renaissance fund organizations examined contain no exceptions.

Centers of Excellence

Pursuant to NDCC Section 15-69-02, the Budget Section considered applications for centers of excellence funding awards recommended by the Centers of Excellence Commission and the Emergency Commission and forwarded to the Budget Section. The Budget Section considered 13 requests, all of which were approved. Centers of excellence projects totaling $10 million were approved in Round 1 of the application process in October 2007. Of the six centers of excellence applications approved in Round 1, two were discontinued. As a result, the Centers of Excellence Commission did not distribute $4.6 million of the $10 million approved for Round 1 projects; therefore, $14.6 million was available for Round 2 applications. Seven projects totaling $14,050,000 were approved in Round 2 of the application process in September 2008. Funding for the 11 approved applications remaining totals $19,450,000, including $15,000,000 from the permanent oil tax trust fund and up to $5,000,000 from loan proceeds from the Bank of North Dakota as authorized in Section 15 of House Bill No. 1018 (2007). The Office of Management and Budget will request authority from the 2009 Legislative Assembly to repay any amounts borrowed from the Bank of North Dakota. The approved applications for centers of excellence are:

- North Dakota State University Center for Agbiotechnology: Oilseed Development II - $1,500,000.
- North Dakota State University Center of Excellence for Surface Protection - $2,000,000.
- University of North Dakota Biomedical Device Research - $2,500,000 (approved, but subsequently discontinued).
- University of North Dakota Unmanned Aircraft System - $1,500,000.
- Lake Region State College Dakota Center for Technology-Optimized Agriculture - $400,000.

- Minot State University Great Plains Knowledge and Data Center - $2,100,000 (approved, but subsequently discontinued).
- North Dakota State University Center for Integrated Electronic Systems - $2,050,000.
- North Dakota State University Center for Biopharmaceutical Research and Production - $2,000,000.
- University of North Dakota Passive Therapeutics - $2,650,000.
- University of North Dakota SUNRISE BioProducts: A Center of Excellence for Chemicals, Polymers, and Composites From Crop Oils - $2,950,000.
- University of North Dakota Petroleum Research, Education, and Entrepreneurship Center of Excellence - $3,000,000.
- University of North Dakota Center of Excellence in Space Technology and Operations - $1,000,000.
- Minot State University - Bottineau Entrepreneurial Center for Horticulture - $400,000.

Centers of Excellence Audit Reports

The Budget Section received, pursuant to NDCC Section 15-69-05(2), the annual audit reports of the 11 centers of excellence approved prior to the 2007-09 biennium and the centers of excellence monitoring report from the Department of Commerce.

Each center of excellence is required to conduct an annual audit and provide it to the State Board of Higher Education, the North Dakota Economic Development Foundation, and the Legislative Council. The department provided audits for the fiscal year ended June 30, 2007. Of the 11 centers audited, 5 centers had no findings, and 6 centers had a combined nine findings. The department reported four of the nine findings have been corrected and the Department of Commerce is working with the centers to correct the remaining five findings. The department reported none of the findings impact the scope or purpose of the project in any significant manner.

The department reported the total state investment in centers of excellence of $23 million has been leveraged by nearly $100 million in matching funds from the private sector and other sources. The department reported 102 private sector companies are participating in the centers of excellence program and the program has resulted in 16 new or expanded businesses. The department reported 500 new direct jobs have been created, with an annual payroll of $21 million and 2,500 new direct jobs are projected.

DEPARTMENT OF CORRECTIONS AND REHABILITATION

Correctional Facility Review Committee Recommendation to the Emergency Commission

Pursuant to Section 10 of House Bill No. 1015 (2007) and a Legislative Council directive that the Correctional Facility Review Committee recommendation be received for informational purposes only by the Budget Section, correspondence from the chairman of the Correctional Facility Review Committee to the chairman of the Emergency Commission was distributed to the Budget Section. The correspondence served to forward the three correctional facility concepts contained in the Criminal Justice Institute's final report and recommend the remodel/expansion of the existing State Penitentiary facility concept to the Emergency Commission. See the report of the Correctional Facility Review Committee for details regarding the committee's study and recommendations.

Space, Operational, and Staffing Plan

The Budget Section received from the Department of Corrections and Rehabilitation information regarding a space, operational, and staffing plan for the State Penitentiary and the James River Correctional Center pursuant to Section 17 of House Bill No. 1015 (2007). The department provided information regarding minimum number of staff at the State Penitentiary, the James River Correctional Center, and the Missouri River Correctional Center. The minimum staffing level is based on the number of posts requiring a security presence to provide for the safety of the inmates, staff, and general public. To staff one post 24 hours a day 7 days a week requires 5.1 FTE officers, which includes the relief factor needed to fill the schedule for the times when an officer is on annual leave, sick leave, military leave, or training.

The Budget Section learned a report from the Criminal Justice Institute included a comparison of the current staffing plan for security officers to what would be required under the proposed plan to remodel and expand the State Penitentiary to accommodate 1,000 inmates. The report estimates the remodel/expansion plan would require an increase of approximately 67 FTE to 73.5 FTE correctional officers; however, the actual number of staff cannot be determined until the plans are complete. The department reported that because the construction of the facility will extend beyond the 2009-11 biennium, it anticipates requesting additional staffing for the next biennium.

Regarding the James River Correctional Center, the department reported a review and analysis of staffing needs reveal an inadequate relief factor and the department anticipates requesting additional officers. The Missouri River Correctional Center also does not have adequate staff to cover absences, resulting in overtime or managing the facility below minimum staffing levels.

The department anticipates space issues to be addressed during the 2009 legislative session include room for a clinic and infirmary, additional segregation cells, more reception, orientation cells, and additional general housing cells. The James River Correctional Center and the Missouri River Correctional Center both operate at maximum capacity. In addition, inmates housed at the Missouri River Correctional Center are preparing for transition back to the community and participate in a number of programs that require

classroom and/or training space. If the Missouri River Correctional Center remains at its existing site, there will be a need to repair the kitchen/dining area and to provide for a multipurpose space to be used for programming and activities.

Inmate Medical System

The Budget Section received, from the Department of Corrections and Rehabilitation, a request for approval of its inmate medical system implementation plan pursuant to Section 12 of House Bill No. 1015 (2007). The department reported inmate populations are constantly moving within the correctional system and an American Correctional Association standard states that an offender's medical file must follow the offender. When, due to overcrowding, an inmate is housed at a county jail, the department must copy and transport large medical files. An electronic medical record system would allow medical staff to focus on more clinical duties, assist in compliance with health record laws, and provide more accountability relating to the cost of inmate and youth offender health care. The department collaborated with the Information Technology Department and has developed a plan for implementation of an inmate medical system. The project is anticipated to be completed over 11 months and cost $1 million.

The Budget Section approved, pursuant to Section 12 of House Bill No. 1015, the Department of Corrections and Rehabilitation's plan for implementation of an inmate medical system.

PUBLIC SERVICE COMMISSION

The Budget Section received a report regarding the status of a facility use agreement between the Public Service Commission and the Facility Management Division of the Office of Management and Budget and the future of the metrology laboratory pursuant to Section 11 of Senate Bill No. 2008 (2007). The Budget Section learned the Public Service Commission staff currently obtains advance approval for all renovations to the metrology laboratory and will continue to do so. Agency staff has met with the Facility Management Division grounds supervisor regarding joint use of the division's truck bay/metrology staging area and has implemented a system in which the state metrologist provides three days' notice to grounds maintenance to remove its equipment to allow the area to be cleaned for scheduled metrology work. The agency has received a proposed joint use agreement from the director of the Facility Management Division and will continue to meet with Facility Management Division staff to develop an agreement that will allow the agency to maintain National Institute of Standards and Technology recognition through the current biennium. The Legislative Assembly appropriated $74,600 from the general fund for the renovation of the metrology laboratory to avoid certain issues of noncompliance with National Institute of Standards and Technology standards. The agency provided a list of improvements made totaling $18,757 and indicated renovations planned for the remainder of the biennium include a new heating, ventilating, and air-conditioning system with an estimated cost of $30,000. The agency continues to work to maintain National Institute of Standards and Technology conditional recognition of the state metrology laboratory by making progress to mitigate noncompliance issues.

STATE FAIR ASSOCIATION

The Budget Section received, pursuant to Section 4 of House Bill No. 1009 (2007), a report on the status of planning for a new grandstand on the state fairgrounds, including the development of a business plan and the progress of fundraising efforts. The Budget Section viewed a video developed by the State Fair Association to aid in its fundraising efforts and received information, including a 2008 North Dakota State Fair brochure; a fundraising brochure; a grandstand factsheet with the history, needs, and economic impact of the State Fair; a conceptual design of the proposed new grandstand facility; and a list of expenditures to date to begin the project. The Budget Section learned the State Fair is the largest annual event held in the state and the economic impact of the State Fair and related activities is over $62 million annually. The Legislative Assembly provided $250,000 of startup funding from the general fund for the construction of a new State Fair grandstand to include planning, fundraising, and preliminary architectural fees. Of this amount, the Budget Section learned $85,974 has been spent through June 2008 on fundraising counsel, a DVD and brochure, a television documentary, and architectural fees. The agency plans to conduct a feasibility study and will establish the fundraising and construction timetable based on the results of its study.

AGRICULTURE COMMISSIONER

Status of the State Meat Inspection Program

The Budget Section received reports, pursuant to Section 13 of Senate Bill No. 2009 (2007), from the Department of Agriculture on the status of the state meat and poultry inspection program. The 2007 Legislative Assembly provided a deficiency appropriation of $58,130 to the department for the 2005-07 biennium, of which the department spent $45,528.

Senate Bill No. 2009 provided funding for four new FTE positions to meet the increased demands for state meat and poultry inspection services. The department reported four new FTE positions include one FTE inspector position that was approved by the Emergency Commission and the Budget Section in March 2006. The other FTE positions include a supervising inspector, an inspector/grader, and an office staff person/relief inspector. The department reported all but one of the FTE positions have been filled, and it is anticipated the vacant position will be filled by the end of the biennium. Total state meat and poultry inspection program expenditures through August 2008 were $813,720, of which $414,247 was from the general fund. Reimbursements for grading services through June 2008 total $5,488. Total revenue for the country of origin labeling program through August 2008 is $3,139 compared to total expenditures of $3,948.

Status of the Endangered Species Program

The Budget Section received reports, pursuant to Section 14 of Senate Bill No. 2009 (2007) from the Department of Agriculture on the status of the endangered species program. Senate Bill No. 2009 provided 1.5 FTE positions and funding of $250,000 for an endangered species program. The department reported the .5 FTE position was combined with an existing vacant .5 FTE position from the noxious weed program to create an FTE geographic information system specialist position. The department has also hired an environmental scientist. An agreement will be formalized with the Environmental Protection Agency regarding the department's provision of information to the agency. The department plans to work with North Dakota State University to develop a pesticide use survey and with the State Department of Health to develop a pesticide monitoring program for surface water. The endangered species program provides the Environmental Protection Agency with data and recommendations to assist the agency in evaluating pesticides for potential effects that threaten and endanger species, as well as assistance with developing pesticide use restrictions. The major component of the Environmental Protection Agency's Endangered Species Protection Program is the use of Endangered Species Protection Bulletins, which add use restrictions above and beyond those on the pesticide label. The bulletins, issued on a county-by-county basis, are enforceable documents under both state and federal law. The program was established to more clearly define areas in which pesticides are restricted, resulting in smaller restricted areas rather than larger default restricted areas. The department submitted a formal plan for approval to the Environmental Protection Agency in June 2008. The department has received Environmental Protection Agency comments on the plan and anticipates making the necessary changes and resubmitting the plan for final approval in the fall of 2008. The program is also responsible for performing risk assessments for Section 18 emergency exemptions and Section 24(c) special local needs registrations under the Federal Insecticide, Fungicide, and Rodenticide Act and providing education and outreach.

ATTORNEY GENERAL

Status of the New Crime Laboratory Building

The Budget Section received periodic reports from the Attorney General's office regarding the status of the new Crime Laboratory building pursuant to Section 13 of Senate Bill No. 2003 (2007). The 2005 Legislative Assembly appropriated $3.65 million for a 13,000-square foot expansion to the existing Crime Laboratory, which is colocated with the State Department of Health laboratory. The Attorney General's office reported after spending nearly $400,000 for design and engineering services, the resulting bids exceeded the funds available and the project was delayed until the 2007 Legislative Assembly could address the issue of additional funding. The 2007 Legislative Assembly allowed the Attorney General's office to continue existing bond proceeds and appropriated an additional $1.44 million from the general fund and $200,000 from special funds for continuation of the project and redesign of a 19,000-square foot structure in close proximity to the existing laboratory. The building was completed and a "ribbon-cutting" ceremony was held October 21, 2008. The Attorney General's office reported although the building is complete, a few items remain unfinished, including the relocation of the State Department of Health's garage elsewhere on the property and the extension of the State Water Commission's gravel surface lot. The garage will be demolished once the new garage is completed and, weather permitting, the relocation will be completed in 2008. It is unlikely the parking lot extension will be completed before spring 2009. The Attorney General's office reported they are confident the new Crime Laboratory will be completed within the $4,790,162 budget. Expenditures through September 2008 totaled $3,847,009.

VETERANS HOME

The Budget Section received periodic reports from the Veterans Home regarding the status of the Veterans Home construction project pursuant to Section 4 of Senate Bill No. 2418 (2007) and a request for Budget Section approval to increase the project authorization for the new Veterans Home construction project from $21,098,656 to $25,600,000 pursuant to NDCC Section 48-01.2-25. The Veterans Home reported plans prepared previously did not address circulation space correctly, and it was not identified in the initial plan. The plan provided for a traditional nursing home design that would have cost approximately $24 million. The federal Department of Veterans Affairs did not approve of the traditional design and preferred a more household or neighborhood concept where residents are grouped in smaller units or pods, which has resulted in increased costs. The federal Department of Veterans Affairs has committed to funding 65 percent of the cost of a 121-bed facility. The home is currently licensed for 150 beds and plans to build a 150-bed facility that will include 4 double rooms and 94 private rooms in basic care and 52 private rooms in skilled care. The design of the new home will require an increase in staff that the Veterans Home anticipates will be paid from revenue increases.

The Veterans Home reported the revised cost of the facility is $25.6 million for a 150-bed facility. The federal Department of Veterans Affairs will provide $13.4 million relating to the 121-bed portion of the facility, requiring a state match of $7.2 million. The Veterans Home reported additional state funding of $5 million is needed to construct the additional 29 beds to provide a total of 150 beds. The 2007 Legislative Assembly appropriated $6.5 million from the permanent oil tax trust fund to match the federal funding for the 121-bed facility and authorized $2.6 million in revenue bonds to provide additional funds for a 150-bed facility. To provide the additional state match of $700,000 required for the 121-bed portion of the project, the Veterans Home will use $75,000 from the Department of Commerce for a geothermal heating system, $150,000 from the veterans' postwar trust fund, and $394,000 of Veterans Home special fund revenue. For the remaining matching

funds, the Veterans Home requested Budget Section approval for $109,000 from the state contingencies appropriation. The Veterans Home plans to submit a request to the 2009 Legislative Assembly for $2.4 million in additional revenue bond authority for the increased funding needed for the additional 29 beds.

The Budget Section approved, pursuant to NDCC Section 48-01.2-25, the Veterans Home request to increase the project authorization for the Veterans Home project from $21.1 million to $25.6 million. The Budget Section also approved an Emergency Commission request to transfer $109,000 from the state contingencies appropriation to provide the necessary additional matching funds and to increase the capital assets line item by $2,128,000.

The Veterans Home reported groundbreaking for the new facility occurred on June 7, 2008. The National Guard has finished the base of the building and a firm has been hired to prepare the site. The federal Department of Veterans Affairs has granted the Veterans Home project conditional approval for 180 days, through March 16, 2009, to allow the 2007 Legislative Assembly to address additional project financing. The Veterans Home plans to begin construction in March 2009.

WORKFORCE SAFETY AND INSURANCE

The Budget Section received periodic reports from Workforce Safety and Insurance regarding the status of the State Auditor's office performance audit recommendations pursuant to Section 5 of Senate Bill No. 2021 (2007). The performance audit contained 60 formal recommendations of which the agency concurred or partially concurred with 56. The agency monitors implementation date, internal audit validation, and validation date.

The Budget Section learned in September 2008 Workforce Safety and Insurance had implemented 48 recommendations and partially implemented 8 recommendations for an implementation rate of 86 percent, and the State Auditor's office is performing followup analysis with regard to the implementation of the audit recommendations.

The Budget Section received information on the recommendations Workforce Safety and Insurance did not concur with at the time the audit was presented from the agency and the State Auditor's office. The agency did not concur with four recommendations at the time the audit was presented. The agency has, however, made progress on two of the recommendations. The Workforce Safety and Insurance Board of Directors has completed training, has drafted policies, reviewed its first monitoring report, and established an ad hoc committee to review board pay. The third recommendation the agency did not concur with related to organizing the Quality Assurance Division under the control of the Internal Audit Division. The agency continues to disagree with this recommendation and believes the Quality Assurance Division exists to assist management in coordinating and monitoring the implementation of recommendations and the function of the Internal Audit Division is to test the recommendations after the quality assurance director has established that they have been implemented. The agency continues to disagree with the recommendation related to the travel and moving expenses of the executive director. The Workforce Safety and Insurance Board of Directors believes the recommendation is no longer applicable. The State Auditor's office reported on a list of eight performance audit recommendations Workforce Safety and Insurance did not concur with, partially concurred with, or could not respond to.

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.

Oliver County

The Budget Section received a request from the Game and Fish Department to authorize the purchase of approximately 208 acres of land in Oliver County adjacent to an existing wildlife management area owned by the Game and Fish Department. The Game and Fish Department has an opportunity to acquire the property at appraised value, estimated at $481,600. The department provided information on requirements relating to the sale which limits the department's future use of the land. Funding for the purchase is to include $200,000 from a federal wildlife grant, matched with $200,000 from the game and fish fund, and the remainder from conservation group donations. The Budget Section expressed concern with the land use restriction included as part of the sale. The department agreed and plans to seek clarification before proceeding with the purchase.

Pursuant to NDCC Section 20.1-02-05.1, the Budget Section approved the Game and Fish Department request to acquire approximately 208 acres of land in Oliver County, subject to land use restriction provisions being removed or changed to the satisfaction of the Game and Fish Department.

Williston

The Budget Section received a request from the Game and Fish Department to authorize the purchase of 2.18 acres of land adjacent to the department's shop and office facility in Williston. The department requested approval to purchase the land for $12,500 primarily for parking and storage space.

Pursuant to NDCC Section 20.1-02-05.1, the Budget Section approved the Game and Fish Department request to acquire 2.18 acres of land in Williston.

JOB SERVICE NORTH DAKOTA

Status of the Job Insurance Trust Fund

Pursuant to NDCC Section 52-02-17, the Budget Section received a report on the status of the job insurance trust fund. As of December 31, 2007, Job Service North Dakota reported the trust fund balance was $120 million, and the target for reserve adequacy was $69.6 million. The agency reported it has exceeded the targeted reserve fund amount due to increased

earnings in recent years and a reduction in the targeted reserve fund balance requirement. The agency provided projected trust fund balances through 2016 to demonstrate how, through rate adjustments, Job Service North Dakota plans to reduce the trust fund balance to the targeted reserve fund amount by December 31, 2016. The agency reported the targeted modified average high-cost multiplier is currently .86 percent.

CORRESPONDENCE FROM ETHANOL PLANTS

Pursuant to NDCC Section 17-02-01, the Budget Section received a report from a North Dakota ethanol plant receiving production incentives from the state. The report, from the Archer Daniels Midland Company plant in Walhalla, indicated the plant produced a profit for the year ending December 31, 2006, and did not receive incentive payments in 2006 from the North Dakota ethanol production incentive program.

STATE AGENCY UNCLAIMED PROPERTY

The Budget Section received reports from the Land Department regarding state agencies that have not submitted a claim for unclaimed property belonging to that agency pursuant to NDCC Section 47-30.1-24.1. The Budget Section learned the North Dakota Uniform Unclaimed Property Act has been in effect since 1975, and since that time, North Dakota state agencies have been reported as being owners of unclaimed property. The 2003 Legislative Assembly enacted Section 47-30.1-24.1 in an effort to resolve the issue of state agency unclaimed property. Section 47-30.1-24.1 provides that within one year of receipt of state agency property the administrator of unclaimed property shall notify the agency by certified mail; the commissioner of University and School Lands shall present a report to the Budget Section identifying every state agency that has not submitted a claim for property belonging to that agency within one year of the receipt of the date of the certified mail receipt; and upon approval of the Budget Section, the agency relinquishes its right to recover its property.

The Land Department reported that during the 2007-08 interim, the Unclaimed Property Division reviewed its database annually and identified a total of 37 state agencies with unclaimed property, and certified letters were mailed to those agencies. Of the 37 state agencies which confirmed receipt of the certified mailing, 16 agencies either claimed the property or signed off on the property and 21 agencies did not respond.

The Budget Section, pursuant to NDCC Section 47-30.1-24.1, approved the lists of state agencies relinquishing their rights to recover unclaimed property.

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. The results of the survey revealed one block grant, the community services block grant administered by the Department of Commerce Division of Community Services, requires legislative hearings. The required public hearing will be held as part of the appropriations hearing for the Department of Commerce during the 2009 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 61st Legislative Assembly through September 30, 2011.

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, 2009, and June 30, 2011. The report indicated for the 2007-09 biennium, state agencies and institutions anticipate receiving $2.463 billion of federal funds, approximately $11.6 million less than the amount appropriated. For the 2009-11 biennium, state agencies and institutions anticipate receiving approximately $2.650 billion of federal funds. Based on estimates, the 2009-11 biennium will require $496.9 million of general fund matching dollars, $41.7 million more than the 2007-09 biennium, if the estimated amounts are appropriated. The 2009-11 amounts are preliminary as several agencies had not filed their 2009-11 budget requests.

LEGISLATIVE COUNCIL STAFF REPORTS

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

- *60th Legislative Assembly Analysis of Legislative Changes to the Executive Budget 2007-09 Biennium*. The report provides information on legislative changes to the executive budget, FTE changes, major programs, and related legislation for each state agency. The report also includes the analysis of various special funds and statistical information on state appropriations.
- *60th Legislative Assembly Budget Status Report for the 2007-09 Biennium*. The report provides information on the status of the general fund and estimated June 30, 2009, ending balance, legislative changes to general fund revenues, and legislative appropriation changes to the executive recommendation.
- *Summary of 2007-09 Centers of Excellence Applications - Round 1.* The report provides a listing of 2005-07 approved applications and summaries of the 2007-09 Round 1 applications.
- *Status of Contingency Appropriations for the 2007-09 Biennium.* The report provides information regarding the status of contingency appropriations for the 2007-09 biennium.
- *2007-09 Biennium Report on Compliance With Legislative Intent*. The report provides the current status of major budget changes and initiatives approved by the 2007 Legislative

Assembly for various agencies. The report contains information regarding the status of major special funds as of March 2009.

- *Ongoing Cost of Budget Section Actions.* The report provides a summary of the Budget Section approvals during the 2007-08 interim to date that have an ongoing cost and the estimated future cost relating to those actions.
- *Summary of 2007-09 Centers of Excellence Applications - Round 2.* The report provides a listing of 2005-07 approved applications, the 2007-09 Round 1 approved applications, and summaries of the 2007-09 Round 2 applications.
- *Approval and Evaluation of Donated Assets - Other States*. The report provides information on other states' methods of evaluating the future costs of donated facilities and any subsequent monitoring of actual costs.

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 27, 2007, meeting to the September 25, 2008, meeting, the Budget Section considered 33 requests, all of which were approved. The 33 Emergency Commission requests approved included expenditure of $70,454,427 of federal funds and $20,988,584 of other funds, line item transfers totaling $381,250, and authorization of eight FTE positions for the remainder of the 2007-09 biennium. At the end of this report is a listing which provides a description of each agency request considered by the Budget Section.

Status of the State Contingencies Appropriation

Eight requests authorized by the Emergency Commission were to obtain funds from the state contingencies appropriation. The following is a summary of the state contingencies appropriation:

State Contingencies Appropriation		
2007 legislative appropriation		$700,000
Emergency Commission requests		
Adjutant General (#1643)	($32,054)[1]	
Attorney General's office (#1654)	(25,000)	
Adjutant General (#1656)	(52,100)	
Veterans Home (#1659)	(109,000)	
Secretary of State (#1661)	(30,263)	
Attorney General's office (#1662)	(7,000)	
Adjutant General (#1663)	(77,700)	
Attorney General's office (#1679)	(84,000)	
Total of Emergency Commission requests		$417,117
Remaining balance - October 2008		$282,883

[1]The Adjutant General requested and received funding of $120,000 for operations support relating to the Northwood tornado damage. The Adjutant General received Federal Emergency Management Agency reimbursement of $87,946 which was returned to the state contingencies fund; therefore, the net amount of the state contingencies disbursement was $32,054.

OTHER REPORTS

The Budget Section received other reports, including:

- Office of Management and Budget - Information on the oil revenue forecast process.
- Office of Management and Budget - Information on the statutory provisions relating to the budget stabilization fund.
- Office of Management and Budget - Information on the factors resulting in oil price discounts.
- North Dakota State University - Information regarding the status of the Northern Tier Network project.
- North Dakota Experimental Program to Stimulate Competitive Research (EPSCoR) - Information regarding an update on the North Dakota EPSCoR program.

This report presents Budget Section activities through September 2008. 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 61st Legislative Assembly in January 2009.

AGENCY REQUESTS CONSIDERED BY THE BUDGET SECTION

Pursuant to NDCC Sections 54-16-04, 54-16-04.1, 54-16-04.2, and 54-16-09, the Budget Section considered 33 agency requests that were authorized by the Emergency Commission. All requests were approved. The following is a list of agency requests approved from June 27, 2007, through September 25, 2008:

Adjutant General

- June 27, 2007 - To increase special funds spending authority by $6,290,000 for the Air Guard contracts ($290,000) and Army Guard contracts ($6,000,000) line items for the 2005-07 biennium. The request is to provide the additional spending authority needed for federally funded capital construction projects started in the 2003-05 biennium but not completed and fully paid until the 2005-07 biennium.
- October 30, 2007 - To transfer $120,000 from the state contingencies appropriation for costs incurred by the North Dakota National Guard for providing operational support in Northwood following the August 2007 tornado.
- March 19, 2008 - To transfer $52,100 from the state contingencies appropriation for costs incurred by the National Guard for assisting residents of Northwood with necessary repairs to damaged homes ($48,000), providing the Department of Transportation with diesel fuel supply assistance ($2,236), and providing operational support in Mandan during a natural gas pipeline break ($1,851).
- June 18, 2008 - To transfer $77,700 from the state contingencies appropriation for costs incurred by the National Guard for missions associated with land-based fires in the Minot area in April 2008.

Department of Agriculture

- June 27, 2007 - To increase spending authority by $110,500 of federal funds from the United States Forest Service for the grants line item ($110,500) for control of leafy spurge and multicounty control of noxious and invasive weeds.
- March 19, 2008 - To increase federal funds spending authority by $264,365 for the salaries and wages line item ($132,832) and operating expenses line item ($131,533). The federal funds are received through the United States Department of Agriculture to conduct a survey related to potato cyst nematode.
- June 18, 2008 - To increase special funds spending authority by $120,825 for operating expenses ($120,825). The additional special funds are from increased revenue from Pride of Dakota events and will be used for Pride of Dakota activities.

Attorney General

- October 30, 2007 - To increase federal funds spending authority by $200,000 for salaries and wages ($49,500), operating expenses ($8,102), and capital assets ($142,398). The federal funds are received through the Department of Transportation from the federal National Highway Traffic Safety Administration for alcohol countermeasure programs.
- September 25, 2008 - To transfer $84,000 from the state contingencies appropriation for the operating line item to reimburse city and county governments for prosecution witness fees and expenses.

Department of Corrections and Rehabilitation

- June 27, 2007 - To increase spending authority by $250,000 of federal funds from the United States Department of Justice for the juvenile community services line item ($250,000) for juvenile justice, juvenile delinquency prevention, and juvenile accountability programs.

Council on the Arts

- June 18, 2008 - To increase federal funds spending authority by $72,000 to accept federal funds from the National Endowment for the Arts for the salary line item ($25,000) for temporary part-time staff and grants line item ($47,000) to support existing grant programs.

Game and Fish Department

- June 18, 2008 - To increase federal funds spending authority by $630,000 for capital assets ($630,000). The federal funds are from the Federal Aid in Wildlife Restoration Act and will be used to construct a wildlife laboratory building in Bismarck.

State Department of Health

- October 30, 2007 - To increase spending authority by $170,000 to accept federal funds from the Centers for Disease Control and Prevention for the salaries and wages line item ($170,000) and approval of two FTE positions for programs pertaining to influenza surveillance and testing along with enhancing detection of pandemic influenza.
- March 19, 2008 - To increase the salaries and wages line item by $74,000 of federal funds from the Centers for Disease Control and Prevention to maintain North Dakota immunization information system (NDIIS) data, enhance the data quality in the NDIIS, and conduct statistical analysis of NDIIS data. The funding is for one FTE epidemiologist II position. This position is included in a five-year grant, which ends December 31, 2012.

Industrial Commission

- September 25, 2008 - To amend a request, which was approved by the Emergency Commission on March 14, 2008, but that did not require Budget Section approval. This request is for approval for a line item transfer of $285,000 from the Oil and Gas Division contingency line item to the salaries line item ($254,750) and the operating line item ($30,250) for employee equity

and retention adjustments and to hire two new FTE positions.

Information Technology Department

- October 30, 2007 - To increase special funds spending authority and the geographic information system line item by $75,000 to accept federal funds from the United States Geological Survey to enhance a software program used to download aerial photographs and scanned maps from the state's geographic information system hub.
- October 30, 2007 (approved March 19, 2008) - To increase special funds spending authority and the Criminal Justice Information Sharing line item by $1,410,160 to accept federal funds from the United States Department of Justice to implement a statewide automated victim information and notification system and to provide one FTE position. The system will be administered by the Department of Corrections and Rehabilitation.

Office of Management and Budget

- September 25, 2008 - To receive borrowing authority of $5 million to secure a loan from the Bank of North Dakota for funding centers of excellence-approved projects as provided for in Section 15 of House Bill No. 1018 (2007).
- September 25, 2008 - To transfer $300,000 from the capital assets line item to the operating expenses line item to provide additional funding for utility expenses.

Department of Public Instruction

- June 27, 2007 - To increase special funds spending authority by $16 million for the operating expenses line item ($1 million) and the other grants line item ($15 million) for the 2005-07 biennium. The funding is for providing grants to school districts during the 2005-07 biennium.
- June 27, 2007 - To increase special funds spending authority for the 2007-09 biennium by $525,800 to accept federal funds from the United States Department of Agriculture for development of a software program to expand and improve direct certification procedures related to child nutrition, food stamps, and temporary assistance to needy families.
- September 25, 2008 - To increase federal funds spending authority by $1,921,812 for the salaries and wages line item ($88,651), the operating expenses line item ($313,545), and the grants-other grants line item ($1,519,616) and provide one FTE position in the Title I Unit to administer the program.

Secretary of State

- March 19, 2008 - To increase spending authority by $575,000 to accept federal funds from the United States Election Assistance Commission for the Help America Vote Act election reform fund and for funding of $30,263 from the state contingencies appropriation for the 5 percent state match required to obtain the $575,000 of federal funds.

Department of Transportation

- June 27, 2007 - To increase the driver and vehicle services line item by $250,000 of federal funds from the National Highway Traffic Safety Administration to provide grants for traffic safety programs.
- October 30, 2007 - To increase the capital assets line item by $4,000,000 of special funds from charges to state agencies for State Fleet Services usage.
- October 30, 2007 - To increase the grants line item by $1,230,436 of federal funds from the National Highway Traffic Safety Administration.
- June 18, 2008 - To increase spending authority by $41,500,000 for the capital assets line item ($31,650,000) and the grants line item ($9,850,000). Additional federal highway funding of $36,800,000 will be used for highway construction and grant purposes. Other political subdivisions will provide matching funds of $4,700,000 to the department.
- June 18, 2008 - To increase federal funds spending authority by $2,205,354 for grants. The federal funds are from the National Highway Traffic Safety Administration to be used for transportation safety grant purposes. No additional matching funds are required.
- September 25, 2008 - To increase special funds spending authority by $4,800,000 for the operating expenses line item ($2,800,000) and the capital assets line item ($2,000,000) to receive additional funds from charges to state agencies for State Fleet Services usage.

University of North Dakota

- June 27, 2007 - To modify and extend into the 2007-09 biennium an existing line of credit in the amount of $1,515,259 with the Bank of North Dakota, pursuant to NDCC Section 54-16-13, for costs related to 1997 flood disaster damages. The line of credit authorized for the 2005-07 biennium was $2,610,854.

Veterans Home

- June 27, 2007 - To increase special funds spending authority from additional resident rent revenue and the operating expenses line item by $100,000 for medical costs, including medications, primary care laboratory work, tests, and x-rays, which were previously covered by the Veterans Administration Medical Center in Fargo and for increases in utilities and travel costs due to high fuel prices and for a line item transfer of $65,000 from the salaries line item to the operating expenses line item for additional contract nursing costs incurred due to the inability to find candidates to fill several vacant nursing positions.
- March 19, 2008 - To increase the salaries and wages line item by $133,500 from special funds available due to actual Veterans Home collections exceeding estimates. The request is

necessary to comply with recommendations resulting from a federal Department of Veterans Affairs survey and focus review. The survey found the Veterans Home had insufficient staffing on the evening shift and the focus review determined the Veterans Home medication administration practices were unsafe. The increase will provide for three FTE certified medication aides and certified nursing assistants.

- March 19, 2008 - To transfer $109,000 from the state contingencies appropriation and to increase the capital assets line item by $2,128,000. The additional funding includes $1,400,000 in federal funds, $619,000 in special funds, and $109,000 from the state contingencies appropriation. The cost estimate for the new 150-bed Veterans Home has increased from $21.1 million to $25.6 million. The cost of the 121-bed portion of the project has increased from $18.5 million to $20.7 million. The federal Department of Veterans Affairs will provide the additional federal funds necessary for 65 percent of the increased cost of the 121-bed facility if the Veterans Home provides written verification of its 35 percent match required for the project. The additional matching funds required total $728,000. The Veterans Home anticipates receiving a $75,000 grant from the Department of Commerce for the geothermal system, $150,000 of funding from the veterans' postwar trust fund as approved by the Administrative Committee on Veterans Affairs, and $394,000 from Veterans Home special funds available due to actual collections exceeding estimates, for a total of $619,000. The remaining $109,000 of the required match was requested from the state contingencies appropriation.

COMMISSION ON ALTERNATIVES TO INCARCERATION

The Commission on Alternatives to Incarceration was created by House Bill No. 1473 (2005). The bill, which was codified as North Dakota Century Code (NDCC) Section 54-35-24, required the Legislative Council chairman to select the chairman and vice chairman of the commission and provided for the membership of the commission as follows:

1. Three members appointed by the Governor, one of whom must be an academic researcher with specialized knowledge of criminal justice sentencing practices and sentencing alternatives;
2. The Attorney General or the Attorney General's designee;
3. Two members appointed by the Chief Justice of the Supreme Court;
4. The director of the Department of Corrections and Rehabilitation;
5. The director of the Department of Human Services;
6. Two local law enforcement officers appointed by the Attorney General;
7. One state's attorney appointed by the North Dakota State's Attorneys Association;
8. Three members of the House of Representatives, two of whom must be selected by the leader representing the majority faction of the House of Representatives and one of whom must be selected by the leader representing the minority faction of the House of Representatives;
9. Three members of the Senate, two of whom must be selected by the leader representing the majority faction of the Senate and one of whom must be selected by the leader representing the minority faction of the Senate; and
10. One representative of the North Dakota Association of Counties appointed by the Association of Counties.

North Dakota Century Code Section 54-35-24 requires the commission to study sentencing alternatives, mandatory sentences, treatment options, the expanded use of problem-solving courts, home monitoring, and other related issues. That section requires the commission to provide to the Governor information and recommendations for the Governor's consideration in time for inclusion of the recommendations in the biennial executive budget. The legislation that created the commission expires June 30, 2009.

Commission members were Senators Joel C. Heitkamp (Chairman), Dick Dever, and Tony Grindberg; Representatives Ron Carlisle, Kari L. Conrad, and Lawrence R. Klemin; Governor's appointees Edward Brownshield, Dr. Gary Rabe, Deborah Ness (who resigned in January 2008), and Keith Witt; Attorney General's designee Thomas L. Trenbeath; Chief Justice's appointees Judge Gail Hagerty and Justice Mary Muehlen Maring; Director of the Department of Corrections and Rehabilitation Leann K. Bertsch; Director of the Department of Human Services Carol K. Olson; Attorney General's law enforcement officer appointees Paul Hendrickson and Paul D. Laney; North Dakota State's Attorneys Association's appointee Bradley A. Cruff; and North Dakota Association of Counties' appointee Duane Johnston.

The commission submitted this report to the Legislative Council at the biennial meeting of the Council in November 2008. The Council accepted the report for submission to the 61st Legislative Assembly.

BACKGROUND

The United States Department of Justice reported that during the 12 months ending June 30, 2006, there were 2,245,189 individuals incarcerated in federal and state prisons and local jails, which was an increase of 2.8 percent from the previous year. The federal report also indicated that the increase in state and federal prison admissions continued to increase faster than the rate of releases, thus resulting in continued growth in prison populations. The department's statistics indicated that there were 497 prisoners per 100,000 residents in this country as of June 30, 2006.

Although the report indicated that the number of state and federal prisoners per 100,000 population in North Dakota--211--is significantly lower than the national average, the report also indicated that the rate of increase in incarcerated individuals in this state--6.1 percent--was among the highest in the nation for the period from June 30, 2005, through June 30, 2006.

Department of Corrections and Rehabilitation

In 2007 the Legislative Assembly appropriated $195.6 million for the Department of Corrections and Rehabilitation for the 2007-09 biennium. Of that amount, $171.6 million is from the general fund. The general fund appropriation included a $41 million transfer to the State Penitentiary land fund for the purpose of addressing correctional facility needs. The general fund appropriation also included $9,528,597 for contract housing of inmates, $7,955,877 of which is for housing female inmates at the Dakota Women's Correctional and Rehabilitation Center and $1,632,720 of which is for housing male inmates at county correctional centers and private facilities.

Division of Adult Services

North Dakota Century Code Section 12-47-01 provides for the establishment of the State Penitentiary. The main prison complex in Bismarck houses maximum and medium security male inmates. As of June 1, 2007, the State Penitentiary housed 530 male inmates. The James River Correctional Center in Jamestown is classified as a medium security housing facility and, as of June 1, 2007, housed 403 medium security male inmates. The 2007 Legislative Assembly provided funding to assist in increasing the capacity of the James River Correctional Center by 20 beds. The Missouri River Correctional Center is south of Bismarck and has

no fences or barriers to contain the inmates. The Missouri River Correctional Center has approximately 150 prison beds and houses minimum security male inmates whose sentences are not less than 30 days nor more than one year. As of June 1, 2007, the Missouri River Correctional Center housed 141 inmates.

The department has offices across the state staffed by parole and probation officers who manage offenders sentenced to supervision by a court, released to parole by the State Parole Board, sent to community placement by the director, or placed at the Tompkins Rehabilitation and Correction Center. The officers supervise offender compliance with the supervision conditions and provide cognitive, behavioral, and other forms of counseling services.

The Tompkins Rehabilitation and Correction Center, a combined program located on the campus of the State Hospital in Jamestown, houses both inmates and noninmates. The center provides a structured two-phased treatment program that generally lasts between 100 days and 120 days. The center is the combination of the Tompkins Rehabilitation and Corrections Unit from the Stutsman County Corrections Center and the Corrections Rehabilitation and Recovery Center. The center consists of three 30-bed wards--one ward (30 beds) for females and two wards (60 beds) for males.

During the 2003-05 biennium, the Department of Corrections and Rehabilitation began to contract with the Dakota Women's Correctional and Rehabilitation Center in New England to house its female inmates. The Dakota Women's Correctional and Rehabilitation Center is owned and operated by the Southwest Multi-County Correction Center Board, which consists of one member from each of the six counties represented in the Southwest Multi-County Correction Center. The six counties are Stark, Slope, Billings, Bowman, Dunn, and Hettinger. The prison at the Dakota Women's Correctional and Rehabilitation Center consists of facilities for minimum and higher security inmates and for administrative segregation. As of June 1, 2007, the Dakota Women's Correctional and Rehabilitation Center housed 101 state inmates.

Division of Juvenile Services and Youth Correctional Center

The Division of Juvenile Services has eight regional 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 400 juveniles per day. The division also oversees the Youth Correctional Center, which is located west of Mandan and is the state's secure juvenile correctional institution. The Youth Correctional Center serves as a secure detention and rehabilitation facility for adjudicated juveniles who require the most restrictive placement and maximum staff supervision and provides appropriate programming to address delinquent behavior. Juvenile programming at the Youth Correctional Center includes drug and alcohol programming, child psychiatric and psychological services, sexual offender programming, 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 Youth Correctional Center provides adjudicated adolescents an opportunity to complete or progress toward completing their education coursework while in residence.

2005-06 INTERIM STUDY AND 2007 LEGISLATION

During the 2005-06 interim, the commission made several recommendations and the Legislative Assembly responded to most of the recommendations.

Electronic Monitoring

The commission recommended Senate Bill No. 2029 (2007), which provided that except for an offense for which the law requires mandatory incarceration, electronic home detention or global positioning system monitoring may be used for certain adult and juvenile offenders. The bill, which was enacted, authorized, subject to the availability of funding, the court, or with the approval of the court, the Department of Corrections and Rehabilitation or a correctional facility, to implement an electronic home detention and global positioning system monitoring program.

Executive Budget and Funding Issues

Faith-Based Treatment Program

The commission recommended the Governor include in the 2007-09 executive budget $300,000 for room and board expenses for individuals admitted to a faith-based program to address addiction problems.

In 2007 the Legislative Assembly included within the 2007-09 biennial budget for the Department of Corrections and Rehabilitation $500,000 for faith-based programming.

Drug Courts

The commission recommended the Governor include in the 2007-09 executive budget approximately $600,000 for the addition of two full-time equivalent (FTE) positions for the Department of Corrections and Rehabilitation and four FTE positions for the Department of Human Services to assist in the expansion of drug courts.

In 2007 the Legislative Assembly included funding and authorization for three FTE positions within the Department of Corrections and Rehabilitation for drug court parole and probation officers and for four additional FTE positions for addiction counselors at regional human service centers.

Robinson Recovery Center

The commission recommended the Governor include in the 2007-09 executive budget up to $1.2 million for the expansion of the Robinson Recovery Center.

In addition to the base funding of $500,000 and an inflationary increase of $134,000, the Legislative Assembly directed that $700,000 from the general fund within the budget for the Department of Human Services must be used for increasing the number of individuals

receiving methamphetamine treatment services at the Robinson Recovery Center.

Community Service Programs

The commission recommended the Governor include in the 2007-09 executive budget $200,000 to be administered on a cost-share basis with local governments for the operation of community service programs.

The Legislative Assembly enacted Senate Bill No. 2243 (2007), which imposed a $50 community service supervision fee upon each defendant who receives a sentence that includes community service. The bill provided that the community service supervision fees collected are to be deposited in the community service supervision fund to be used to provide community service supervision grants. The bill appropriated $125,000 from the fund for the 2007-09 biennium to the Department of Corrections and Rehabilitation for providing matching grants for community service supervision of offenders and directed the department to use $100,000 of the funds appropriated in the Field Services line item in Section 3 of House Bill No. 1015 (2007) for the purpose of providing matching grants for community service supervision of offenders for the biennium.

Cass County Jail Intervention Committee

The commission recommended the Governor include in the 2007-09 executive budget $582,000 to assist in implementing the Cass County Jail Intervention Coordinating Committee mental health project, to be contingent upon the receipt of a federal grant for the implementation of the project.

Other Recommendations and Statements

The commission expressed its support for an appropriate level of funding, staffing, and training for electronic monitoring programs and the continued use and expansion of the secure continuous remote alcohol monitoring program. The commission encouraged the Governor to assess the need for reducing caseloads for licensed addiction counselors, case managers for individuals with serious mental illnesses, and parole and probation officers to attempt to achieve industry caseload standards.

The Legislative Assembly provided funding in the 2007-09 budget for the Department of Human Services for 4 additional full-time case managers, 1 additional addiction counselor, and 1 sexual abuse therapist and provided funding in the budget for the Department of Corrections and Rehabilitation for up to an additional 11 parole and probation officers and 1 corrections agent.

The commission recommended the provision of adequate funding for mental health and substance abuse programs.

The Legislative Assembly included within the budget for the Department of Human Services approximately $2.8 million for the phasein of a community-based sexual offender treatment program.

The commission encouraged the Department of Human Services to work with treatment providers to identify gaps in recovery support services and to assist in the implementation of programs to provide early mental health screenings.

The commission encouraged school districts to operate alternative schools to assist in keeping adolescents in school.

The commission encouraged the continued study of the effectiveness of substance abuse treatment programs. The Legislative Assembly amended NDCC Section 19-03.1-45 to continue the drug assessment and treatment diversion program and expanded the program from a three-county pilot program to a statewide program.

The commission encouraged state agencies and other entities to place additional emphasis on education and awareness of substance abuse issues.

The commission expressed support for the work of the Prevention Advisory Council on Drugs and Alcohol appointed by the Governor, including the identification of methods for strengthening families and healthy communities.

The commission expressed support and encouragement for private initiatives, such as programs that provide mentors for children of incarcerated individuals.

TESTIMONY AND COMMISSION CONSIDERATIONS

Department of Corrections and Rehabilitation

Department Reorganization

The commission received reports from representatives of the Department of Corrections and Rehabilitation regarding programs and initiatives at the department which provide alternatives to incarceration or which are intended to keep offenders from reoffending.

In 1989 the Legislative Assembly merged the State Penitentiary, the Parole and Probation Department, and the Division of Juvenile Services into the newly created Department of Corrections and Rehabilitation. The legislation creating the department provided that the department consists of a Division of Adult Services, a Division of Juvenile Services, and such other divisions as determined necessary. From 1989 until 2007, the department included a Prisons Division and a Parole and Probation Division, which later became known as the Field Services Division.

The commission was informed that the department sought to be considered for a National Institute of Corrections program--the Transition to Community Initiative. In working to implement that initiative, officials of the department recognized that the significant growth of the Prisons Division and the Field Services Division resulted in a fragmentation of the department. To better achieve the results desired under the initiative, the department underwent a restructuring at the directive of the director of the department. Beginning in May 2007, the department moved to merge the Field Services Division and the Prisons Division into a Division of Adult Services to combine all adult services under one division director. Under that director, there are now nine deputy directors. The department also established a centralized administration office and a human resources office. The

reorganized department continues to include a Division of Juvenile Services.

The commission received testimony from a representative of the Department of Corrections and Rehabilitation indicating that the department has achieved a measure of stability after the reorganization, but continues to experience a significant level of turnover in security staff and has experienced difficulty in retaining and attracting employees for treatment positions and parole officer positions. The testimony indicated that much of the turnover was due, in part, to low salaries.

Recidivism and Transition

The commission received testimony indicating the recidivism rate--offenders reoffending--in this state is approximately 23 percent, which compares very favorably nationally. However, testimony revealed that the department lacks the resources to maintain a system that fully tracks all offenders after release from supervision.

A key to reducing recidivism is to prepare an offender to reenter the community and to provide the education and training necessary to help the offender succeed after release from incarceration. The department has initiated a process through which the department assesses all new inmates to identify individual strengths, aptitudes, and interests with the goal of recommending programs to enhance inmates' ability to transition into the community upon release. The department also is working with Job Service North Dakota, the Department of Commerce, and private industry to identify workforce needs in the state. By collaborating with workforce training programs in the state, the department is attempting to educate and train offenders to fill unmet needs in the state's workforce and, thereby, lessen the chances that an offender will reoffend.

In transitioning offenders back to the community, the department uses facilities of the department, including the Missouri River Correctional Center and the Tompkins Rehabilitation and Correction Center, as well as contract facilities. Testimony indicated that in addition to transition facilities such as the Bismarck Transition Center and Centre, Inc., the department has begun to consider the use of county jails as a transition opportunity for offenders as a method to improve employment opportunities, reunify families, and connect the offender with local service providers.

The commission received testimony from a member of the Legislative Assembly who proposed using excess capacity in the North Dakota University System to provide treatment and educational opportunities for offenders. The proposal suggested that the smaller campuses in the state could bid to have a corrections program located on the campus, which would allow for self-determination and community support for the program. Under the proposal, a low-risk offender who demonstrates a greater potential for rehabilitation could be provided career skills while not being exposed to the prison atmosphere.

Sexual Offender Task Forces and Electronic Monitoring

The commission received testimony regarding the monitoring of sexual offenders upon release from custody. The department has placed sexual offender specialists around the state to work with local law enforcement, parole and probation officers, treatment providers, state's attorneys, and victims' advocates to collaborate in the supervision, treatment, and management of registered sexual offenders who are required to be supervised.

One of the tools used in the supervision of sexual offenders is global positioning system monitoring. Testimony cautioned, however, that electronic monitoring is only a tool to be used, and cannot be used exclusively. The commission received testimony indicating that some sexual offenders experience difficulty in finding housing upon release from incarceration, which makes it more difficult for the department and law enforcement to supervise and monitor the offenders.

The commission received testimony indicating that the electronic monitoring legislation enacted in 2007 placed with courts the responsibility for determining if electronic monitoring for any eligible offender is appropriate. A member of the judiciary suggested that the responsibility for the electronic monitoring program better rests with law enforcement.

Dakota Women's Correctional and Rehabilitation Center

The commission toured the Dakota Women's Correctional and Rehabilitation Center in New England. The Dakota Women's Correctional and Rehabilitation Center consists of a 70-bed minimum security unit, a 40-bed medium security unit, a 16-bed orientation unit, and a 5-bed high security unit. The center offers treatment and education and training programs similar to those offered in facilities under the control of the Department of Corrections and Rehabilitation, including a welding and carpentry program and a prison industry sewing facility. The commission received testimony indicating that there are significant employment opportunities for offenders trained in the welding program.

Tompkins Rehabilitation and Correction Center

The commission toured the Tompkins Rehabilitation and Correction Center in Jamestown. The center is a Department of Corrections and Rehabilitation-funded program at the State Hospital consisting of 90 beds. Treatment at the center generally requires between 100 days and 120 days of residential treatment and subsequent community supervision.

Faith-Based Community Housing Initiative

The commission received a report indicating the Department of Corrections and Rehabilitation has continued to contract with the Teen Challenge program to provide housing for individuals participating in the residential treatment program. The testimony indicated that the partnership has produced good results and that

officials of the department have sought to involve inmates in the program before the inmates are paroled.

Department of Human Services

The commission received reports from representatives of the Department of Human Services regarding substance abuse treatment programs and mental health intervention programs provided by the department. The commission received testimony indicating that alcohol continues to be the primary substance abuse problem, followed by marijuana and methamphetamine. Although the use of meth-amphetamine appears to be decreasing within the state, the commission received information indicating the abuse of prescription drugs is a growing problem in the state.

Regional Human Service Centers

The Department of Human Services provides substance abuse treatment to the public through the eight regional human service centers. In addition to providing a variety of substance abuse treatment services, the human service centers have the ability to contract with private service providers for additional treatment services so that the department is able to offer treatment options ranging from outpatient to residential treatment. The regional human service centers also provide crisis intervention and assessment services.

The commission received testimony from representatives of the Department of Human Services regarding the crisis intervention team model--a program geared to divert individuals from the criminal justice system, emergency rooms, and intensive services when appropriate and to improve treatment for mentally ill individuals. The model requires a close working relationship between law enforcement officials and mental health professionals and may include the use of crisis stabilization units, mobile crisis teams, homeless shelters, and detoxification units. Although there may be variations of the model, the general purpose of the model is to train law enforcement officers to assess situations that may involve mental illness and to determine when intervention of mental health professionals may be appropriate to divert mentally ill individuals from the criminal justice system and provide treatment options.

The commission received testimony indicating that implementation of a pilot program for crisis intervention team training likely would require approximately $125,000 for the biennium. Although commission members were uncertain as to the parameters of such a program, the commission members generally agreed that because the program would be designed to train law enforcement officers, the program should be coordinated through the office of the Attorney General.

Robinson Recovery Center

The commission received testimony regarding the treatment of methamphetamine addiction at the Robinson Recovery Center in Fargo. In 2007 the Legislative Assembly doubled the amount of funding provided for the Robinson Recovery Center so that 40 beds would be available at the center. The Robinson Recovery Center is one of three residential treatment facilities in the United States that focuses specifically on treatment for methamphetamine addiction.

The Robinson Recovery Center received 157 referrals between July 1, 2007, and June 30, 2008. Over 50 percent of the referrals were from the Fargo area. During that time period the center admitted 62 individuals, approximately 20 percent of whom resided in the western portion of the state. The number of admissions at the center has never exceeded 30.

The commission received testimony suggesting that mandatory sentencing laws have limited the ability of the Robinson Recovery Center to admit a significant number of individuals referred to the center. Of the individuals denied admission between July 1, 2007, and June 30, 2008, approximately one-third were denied because they were required to serve mandatory sentences.

The commission received testimony indicating there is a shortage in the state of residential treatment facilities for substance abuse addictions other than methamphetamine addiction. In addition, commission members expressed concerns regarding the availability of residential treatment for methamphetamine in the western portion and rural areas of the state.

The commission considered a bill draft that would have allowed a judge to defer the imposition of a sentence or suspend a sentence when a mandatory term of imprisonment is required for a drug possession offense. Because it appeared that most individuals denied admission to the Robinson Recovery Center due to mandatory sentences were likely guilty of more than possession offenses or likely originally charged with delivery offenses, commission members expressed concerns regarding whether the bill draft would have any impact on admissions to the Robinson Recovery Center.

Drug Courts

The commission received reports regarding the status of drug courts in the state. The state drug courts have been administered as cooperative ventures among district judges, state's attorneys, the Department of Corrections and Rehabilitation, the Department of Human Services, and contracted private treatment providers. Juvenile drug courts have expanded to include courts in Williston and Minot in addition to the courts in Bismarck, Fargo, and Grand Forks. Adult drug courts have continued to operate in Bismarck and Fargo, and testimony indicated that planning was underway for the implementation of adult drug courts in Grand Forks and Minot. Testimony indicated both the juvenile and adult drug courts have been a cost-effective and successful alternative to incarceration.

In addition to the state drug courts, the commission received testimony regarding the operation of a tribal drug court in Belcourt and the plan to implement a juvenile drug court in that community. Although testimony indicated the adult drug court in Belcourt has been successful, the drug court faces substantial funding issues.

Community Service Programs

A court is required to impose a $50 community service supervision fee upon each defendant who receives a sentence that includes community service. The community service supervision fees collected are to be deposited in the community service supervision fund to be used to provide community service supervision grants. The commission was informed that the community service fee is low on the hierarchy of fees that a court is required to impose, and defendants often do not have the financial resources to pay the fees imposed by courts. Therefore, many judges do not impose the community service fee when ordering a defendant to perform community service. Because less than $15,000 had been collected and deposited in the community service supervision fund during the first nine months of the 2007-09 biennium, community service supervision grants were not likely to amount to the $125,000 appropriated from the fund for the biennium.

Proponents of community service programs contended that the programs reduce incarceration rates and keep offenders out of the state criminal justice system, which results in cost-savings for the state. It was also argued that the programs, especially when operated in conjunction with drug-testing programs, are an effective tool to reduce recidivism. A representative of the Department of Corrections and Rehabilitation testified that the community service programs were created with the intention that the programs would become self-supporting at the local level after a period of initial state support.

The commission considered a bill draft to repeal the $50 community service supervision fee. Proponents of the bill draft contended that the fee has been a burden to community service programs and community service participants and that the state has an obligation to provide an adequate level of support to assist communities providing community service programs.

Cass County Justice and Mental Health Collaboration Project

The commission received reports regarding the progress of implementation of the Cass County Justice and Mental Health Collaboration Project. The testimony indicated that the project has received a federal grant for planning and implementation of the project, which is designed to keep nonviolent mentally ill offenders out of jail when appropriate. The diversion program is intended to provide a mental health assessment of an individual who has been arrested to determine if a mental health issue may be an underlying cause of the individual's criminal behavior. Testimony indicated that state funding in the amount of $86,000 could assist in operating the program for 18 months.

24/7 Sobriety Program

The commission received a report from the Attorney General and the Attorney General of South Dakota regarding implementation of a program designed to keep repeat driving under the influence offenders from consuming alcohol or drugs through the use of twice daily drug and alcohol testing. The 24/7 program has been in widespread operation in South Dakota since 2005. During the first three and one half years of operation in that state, nearly 8,000 individuals participated in the program and nearly 1.3 million tests were administered. Of those tests, over 99 percent passed. The testimony revealed that the success of the program is dependent upon the threat of incarceration for a failed or missed test and the immediate imposition of that sanction.

In 2007 the Legislative Assembly authorized the Attorney General to establish a sobriety pilot project in one or more judicial districts during the 2007-09 biennium. The pilot project was implemented in the South Central Judicial District and allows a court to condition any bond or pretrial release of a defendant who is charged with a second or subsequent driving under the influence offense on participation in the program. The defendant must agree not to consume any alcoholic beverages and must commit to twice-per-day breath testing or electronic monitoring. As of August 13, 2008, 96 individuals participated in the pilot project. During that time, 5,765 tests were administered. Of that number, there were 83 failed tests or no-shows. Although most of the participants were required to report for breath tests, the program has implemented electronic monitoring through the use of five continuous alcohol monitoring bracelets.

The commission considered a bill draft that would have authorized the extension of temporary driving permits for participants in the 24/7 sobriety program. Although commission members were supportive of the program and cognizant of the need for participants to be able to drive to report for breath tests, concerns were expressed regarding the impact of the bill draft with respect to federal highway funding and the need for additional comment from representatives of the Department of Transportation.

Nongovernmental Programs

The commission received testimony from representatives of the Youthworks program and Lutheran Social Services regarding intervention programs administered and offered by those entities.

Youthworks

Youthworks is a private, nonprofit agency with a mission to prevent youth from entering the juvenile justice system and foster care. Youthworks operates a short-term care and assessment center in Bismarck which is able to serve up to five juveniles at a time. The juveniles served at the center are referred after experiencing a crisis, which may include the issuance of a juvenile citation, a mental health crisis, or an incidence of abuse. The purpose of the referral is to prevent long-term placement out of the juvenile's home. Juveniles referred to the program may receive attendant care, which typically is the result of a referral by law enforcement and which generally lasts less than 24 hours. Short-term or shelter care placements require parental or guardian consent and require reunification of the juvenile and parent or guardian within 96 hours,

unless a court hearing has been held to allow continued placement.

The commission received testimony indicating that the Youthworks intervention programs have been supported through private sources and grant funding. It was contended that the intervention programs have contributed to a reduction in costs incurred by the juvenile justice system and social services while addressing a crisis and ultimately keeping the juveniles united with their families.

Lutheran Social Services

Lutheran Social Services is a private, nonprofit, faith-based organization that has served the state since 1919. Lutheran Social Services operates a Youth Court in Cass County through which first-time offenders appear before a jury of their peers. In Grand Forks and Nelson Counties, the DIVERT program uses an intensive counseling approach to identify underlying issues of conflict between a parent and a child or to identify a mental health issue. The Youth Court and DIVERT programs have been funded through a variety of grants, donations, and private sources. It was argued that the early intervention provided by the programs is effective in keeping the juveniles served by the programs out of the court system.

A representative of Lutheran Social Services provided the commission with information regarding the Healthy Families program, which is a voluntary home visiting program designed to prevent child abuse and neglect; the Day Report Center in Grand Forks, which provides supervision of high-risk juvenile offenders during the late afternoon and evening; restorative justice programs, which bring together all parties involved in an offense to attempt to resolve the problem and address the offense, including the payment of restitution; and adult reintegration services provided through a pilot program in Bismarck which are designed to assist offenders by providing testing and work skills evaluation, preemployment training, and job placement.

Other Reports

Rural Crime and Justice Center

The commission received a report regarding the Rural Crime and Justice Center at Minot State University. The center was created in 1999 and became designated as a Center of Excellence in 2002. A representative of the center reported to the commission regarding the center's Rural Methamphetamine Education Project, which has received funding from the United States Department of Justice. The purpose of the project is to provide public awareness and education with respect to methamphetamine use to individuals, schools, and communities. The project partnered with Prairie Public Television to produce three documentaries relating to methamphetamine. Between February 2003 and October 2007, the project included over 900 presentations that were attended by more than 87,000 individuals. The center also has been conducting a methamphetamine residual effects study, a Victim's Assistance Academy, and a North Dakota Crime Perception Survey.

Individual Justice Planning Project

The commission received a report regarding the Individual Justice Planning Project being undertaken by the Protection and Advocacy Project in cooperation with a number of entities, including the Department of Human Services, the Department of Corrections and Rehabilitation, and the judiciary. Although the Individual Justice Planning Project was established in 1988, the project was rarely used. The development of a new manual for the project was seen as an opportunity to expand the use of the project. The purpose of the project is to present alternatives to the criminal justice system, when appropriate, to address behavior that may have resulted from a mental or cognitive impairment. Pursuant to that purpose, an individual justice plan developed for an individual must provide accountability for the behavior, but provide a less restrictive alternative approach to addressing the behavior which does not include incarceration.

Pathways to Prosperity

The commission received a report regarding the Pathways to Prosperity program established through a foundation grant for members of the Turtle Mountain Band of Chippewa Indians. The purpose of the grant is to reduce poverty over a 10-year period. As part of the poverty reduction plan, one strategy includes an effort to reach out to at-risk youth, which may eventually include the creation of a youth drug court as well as other drug and alcohol prevention programs.

Project Peacemaker

The commission received a report regarding Project Peacemaker, which is a program at the Turtle Mountain Community College designed to increase tribal members' knowledge of the law. The program is also intended to improve the curriculum of tribal colleges in law-related education and to train tribal council members, court employees, and other judicial officials.

Hyperbaric Oxygen Treatment

The commission received a report regarding hyperbaric oxygen treatment for brain injuries and the potential to use the treatment to address brain damage due to drug abuse. The commission received testimony from a physician who proposed the creation of a hyperbaric center of excellence. The testimony suggested that an investment by the state of approximately $500,000 could provide the equipment to establish a fixed-base hyperbaric oxygen facility and a mobile unit to be used for research and treatment purposes.

Continuation of the Commission

Commission members discussed the mission of the commission and whether continued study may be necessary to achieve the purposes of the commission. The commission considered a bill draft to extend the life of the commission for an additional four years until June 30, 2013. Commission members generally agreed that the commission has been effective in developing and proposing solutions to address issues related to

incarceration in this state and that continued study would be desirable.

RECOMMENDATIONS

2009-11 Executive Budget and Funding Issues

The commission recommends the Governor include $500,000 in the executive budget for room and board expenses for individuals admitted to a faith-based program to address addiction problems.

The commission recommends the Governor include $500,000 in the executive budget for the Department of Corrections and Rehabilitation to be used by the department to provide matching grants for community service programs at a level to be determined by the department.

The commission recommends the Governor include $86,000 in the executive budget for the Cass County Justice and Mental Health Collaboration Project.

The commission recommends the inclusion of $126,576 in the budget for the Attorney General to provide for crisis intervention training for law enforcement officials.

The commission expressed its support for a request by the Department of Human Services for expanded state funding for juvenile crisis intervention programs around the state.

Community Service Supervision Bill

The commission recommends Senate Bill No. 2028 to repeal the $50 community service supervision fee that courts are required to impose on participants in community service programs.

Commission Extension Bill

The commission recommends Senate Bill No. 2029 to extend the existence of the commission until June 30, 2013.

Other Recommendations and Statements

The commission encouraged the Governor and the Department of Human Services to allow the Robinson Recovery Center to address treatment needs for addictions other than the treatment of methamphetamine addiction.

The commission expressed its support for the efforts of the Department of Human Services and encouraged the department to provide broader residential treatment services for addictions and mental health issues on a statewide basis.

The commission expressed its support for legislation during the 2009 legislative session to clarify the role of the county sheriff in supervision of electronic home monitoring in misdemeanor cases.

The commission expressed its support for the 24/7 sobriety program initiated by the Attorney General and the efforts of the Attorney General to work with the Department of Transportation to extend work permits for participants in the 24/7 sobriety program.

CORRECTIONAL FACILITY REVIEW COMMITTEE

The Correctional Facility Review Committee was created by Section 10 of House Bill No. 1015 (2007) to address the immediate and future needs of the State Penitentiary through a correctional facility review study. Section 10 of House Bill No. 1015 required the Legislative Council chairman to select the chairman and vice chairman of the committee and provided for the membership of the committee as follows:

1. Three members from the House of Representatives, two of whom must represent the majority faction of the House of Representatives and one of whom must represent the minority faction of the House of Representatives; and
2. Three members from the Senate, two of whom must represent the majority faction of the Senate and one of whom must represent the minority faction of the Senate.

Pursuant to Section 2 of Senate Bill No. 2136 (2007), the Legislative Council also assigned the committee the responsibility to receive a report from the Department of Human Services on services provided by the Department of Corrections and Rehabilitation relating to individuals at the State Hospital who have been committed to the care and custody of the executive director of the Department of Human Services.

Committee members were Representatives Chet Pollert (Chairman), Ralph Metcalf, and Alon Wieland and Senators Tony Grindberg, David O'Connell, and Bob Stenehjem.

The committee submitted this report to the Legislative Council at the biennial meeting of the Council in November 2008. The Council accepted the report for submission to the 61st Legislative Assembly.

CORRECTIONAL FACILITY REVIEW STUDY

Background

Department of Corrections and Rehabilitation Services

The Department of Corrections and Rehabilitation includes two major programs--juvenile services and adult services. The Juvenile Services Division is responsible for the Youth Correctional Center. The Adult Services Division is responsible for the State Penitentiary, James River Correctional Center (JRCC), and the Missouri River Correctional Center (MRCC). In addition, male inmates may be held in local correctional centers, in the community placement program, and in other states' facilities through the interstate compact program.

2007-09 Biennium Appropriation

The 2007-09 biennium appropriation for the Department of Corrections and Rehabilitation is $198 million, of which $173.5 million is from the general fund. The general fund appropriation includes $41 million transferred from the general fund to the State Penitentiary land fund for a correctional facility project as authorized and approved under Section 10 of 2007 House Bill No. 1015, referred to above. The $198 million includes the appropriation for adult services of $174.2 million, of which $155.4 million is from the general fund, and the appropriation for youth services of $23.8 million, of which $18.1 million is from the general fund. The 2007 Legislative Assembly provided $9,588,597 for inmate contract housing. This amount includes $9,528,597 from the general fund and $60,000 of federal funds. This funding is to be used to house female inmates at the Dakota Women's Correctional and Rehabilitation Center (DWCRC) in New England ($7,955,877) and to house excess male inmates at county jails and private facilities ($1,632,720).

Full-Time Equivalent Positions

The Department of Corrections and Rehabilitation was authorized 711.29 full-time equivalent (FTE) positions for the 2007-09 biennium, an increase of 34.01 FTE positions from the 2005-07 appropriation. The 34.01 new FTE positions include 5 FTE positions for youth services and 29.01 FTE positions for adult services.

State Penitentiary

North Dakota Century Code (NDCC) Section 12-47-01 provides for the establishment of the State Penitentiary, which is to be located at the city of Bismarck in Burleigh County. The State Penitentiary, which was founded in 1885, is the state's maximum security housing facility and is composed of seven units that are used to house male inmates. Those seven units consist of the north unit (orientation unit), the overflow unit, the east cellhouse, the west cellhouse, the south unit, the treatment unit, and the administrative segregation unit. The Penitentiary and the immediate surrounding property occupy approximately 200 acres on the eastern outskirts of Bismarck. In total, the Department of Corrections and Rehabilitation owns approximately 2,500 acres, which include the State Penitentiary site, MRCC, and 1,200 acres used for farming purposes at Sunny Farm west of Mandan. The Penitentiary consists of 562 prison beds and houses maximum security male inmates as well as some medium security male inmates.

James River Correctional Center

North Dakota Century Code Section 12-47-01 was amended in 1997 to permit the director of the Department of Corrections and Rehabilitation to establish affiliated facilities at other locations throughout the state within the limits of legislative appropriations. The James River Correctional Center, which is located on the grounds of the State Hospital in Jamestown, was completed for use as a correctional facility in 1998. The James River Correctional Center is classified as a medium security housing facility and contains three units for its inmate population which have a combined capacity of 405 beds.

The 2005 Legislative Assembly provided $980,000 for ET building improvements and $584,000 for code

improvements in Building 18A (programs building) at JRCC. The ET building improvements included security improvements, energy efficiency improvements, and an increase in bed space by converting four existing pantry areas to 5-bed dormitories for a total increase in bed capacity of 20 beds. The code improvements to Building 18A included improvements to restrooms, roof replacement, and improvements to the elevator and stairwell for accessibility by disabled individuals. Construction costs for the JRCC ET building and Building 18A improvements, which totaled $1,564,000, were financed through the issuance of bonds authorized in Senate Bill No. 2023 (2005).

The 2007 Legislative Assembly provided $596,075 for extraordinary repairs at JRCC, including roof repairs for the kitchen and administrative building and installing fire suppression systems in the kitchen, laundry, and administrative building.

Missouri River Correctional Center

The Missouri River Correctional Center is located eight miles south of Bismarck near the Missouri River. The Missouri River Correctional Center has no barriers to contain the inmates and is located in a wooded setting. The institution houses male inmates whose sentences are not less than 30 days nor more than one year. The inmate housing facilities at MRCC consist of a minimum security, dormitory-style housing unit for male inmates which has a capacity of 150 inmates.

Among the education programs offered to the inmates at MRCC are a high school equivalency program, a resident tutoring program, a business education class, an automotive mechanics program, carpentry classes, computer skills training, and prerelease and education release programs.

Dakota Women's Correctional and Rehabilitation Center

During the 2003-05 biennium, the Department of Corrections and Rehabilitation began to contract with DWCRC to house its female inmates. The Dakota Women's Correctional and Rehabilitation Center is located in New England and is owned and operated by the Southwest Multi-County Correction Center Board, which consists of one member from each of the six counties represented in the Southwest Multi-County Correction Center. The six counties include Stark, Slope, Billings, Bowman, Dunn, and Hettinger.

Tompkins Rehabilitation and Correction Center

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 Adult Services Division and houses both inmates and noninmates. The Tompkins Rehabilitation and Correction Center is the combination of the former Tompkins Rehabilitation and Corrections Unit at the Stutsman County Corrections Center and the Corrections Rehabilitation and Recovery Center (DUI Center). The Tompkins Rehabilitation and Correction Center consists of three 30-bed wards--one ward (30 beds) for females and two wards (60 beds) for males.

Previous Studies

The following studies have been completed regarding the Department of Corrections and Rehabilitation:

- 1977-78 interim - The Legislative Council's Corrections Committee, pursuant to Senate Concurrent Resolution No. 4060 (1977), was directed to study the entire criminal justice system.
- 1979-80 interim - The Legislative Council's State and Federal Government "B" Committee, pursuant to Senate Concurrent Resolution No. 4019 (1979), was directed to conduct a comprehensive study and evaluation of the adult correctional facility needs throughout the state.
- 1987-88 interim - The Legislative Council's Judiciary Committee, pursuant to Senate Concurrent Resolution No. 4022 (1987), studied the criminal sentencing statutes in misdemeanor and felony cases.
- 1993-94 interim - The Legislative Council's Budget Committee on Government Finance, pursuant to Senate Concurrent Resolution No. 4063 (1993), studied the feasibility and desirability of establishing a women's correctional facility off the State Penitentiary grounds.
- 1995-96 interim - The Legislative Council's Legislative Audit and Fiscal Review Committee received a report from the State Auditor's office on the cost of House Bill No. 1062 (1993) regarding mandatory sentencing for drug offenders.
- 1999-2000 interim - The Legislative Council's Criminal Justice Committee, pursuant to Senate Concurrent Resolution No. 4015 (1999), studied the adult correctional system. The committee's considerations centered on four issues--prison facilities and inmate population, interstate transfer of convicted felons, inmate records, and the Revocation Center.
- 2001-02 interim - The Legislative Council's Corrections Committee, pursuant to Section 5 of Senate Bill No. 2016 (2001), was directed to study the facilities and operations of the Department of Corrections and Rehabilitation.
- 2003-04 interim - The Legislative Council's Budget Committee on Government Services, pursuant to Section 6 of House Bill No. 1506 (2003), 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. In addition, the State Auditor's office contracted with Criminal Justice Institute (CJI), Inc., a consulting firm, to conduct a performance audit of the Department of Corrections and Rehabilitation.
- 2005-06 interim - The Legislative Council's Budget Committee on Government Services, pursuant to Section 12 of Senate Bill No. 2015 (2005), studied the Department of Corrections and

Rehabilitation's incarceration and correctional facility needs; in addition, the 2005 Legislative Assembly passed House Bill No. 1473 which established a Commission on Alternatives to Incarceration to study sentencing alternatives, mandatory sentences, treatment options, the expanded use of problem-solving courts, home monitoring, and other related issues.

Consultant Services and Methodology

The committee developed a request for proposal for consultant and architectural services related to a correctional facility review study addressing the immediate and future needs of the State Penitentiary and authorized the request for proposal be sent to 27 potential consultants. The request for proposal provided that the study include a comprehensive review of the current State Penitentiary facility and MRCC to develop the following three concepts:

1. Construction of a new correctional facility on the existing State Penitentiary site;
2. Construction of a new correctional facility at a site other than the State Penitentiary site; and
3. Remodeling of the existing State Penitentiary facility.

Each of the three correctional facility concepts developed by the consultant and architect were to:

1. Include a master plan, staffing plan, a cost-benefit analysis comparison of existing to proposed concepts, and project cost estimate;
2. Be based upon housing a population of approximately 900 inmates to 1,000 inmates;
3. Address priority immediate facility needs in a phased approach;
4. Include options for expansion;
5. Take into consideration the transfer of the inmates at MRCC to the new or remodeled facility;
6. Take into consideration the facility and staffing needs of JRCC; and
7. Include a preliminary architectural design.

The Legislative Council received proposals from seven companies interested in conducting the correctional facility review study. The committee received presentations of the proposals from representatives of the companies and forwarded three finalists to the Legislative Council for approval. The Legislative Council selected and contracted with CJI, Inc., a private, not-for-profit, national correctional planning, programming, research, and evaluation firm based in Middletown, Connecticut. CJI, Inc., began its work in September 2007 and concluded the study with the presentation of a final report to the Correctional Facility Review Committee in April 2008.

CJI, Inc., completed interviews with public and private stakeholders, including the Department of Corrections and Rehabilitation, executive branch officials, legislators, Bismarck, Mandan, Burleigh County, and Morton County officials, and the private sector; reviewed documentation; and conducted tours of existing state correctional facilities and potential penitentiary sites.

Study Findings and Recommendations

The CJI, Inc., final report for the correctional facility review study included information regarding existing conditions at the State Penitentiary, projected needs, site evaluations, model facility design concepts, cost-benefit analyses, and the consultant's conclusions and recommendations. The report may be viewed on the Internet at *www.legis.nd.gov/docs/pdf/cjireport.pdf*.

Existing Conditions of the State Penitentiary and Missouri River Correctional Center

CJI, Inc., identified the following conditions relating to the State Penitentiary and the MRCC:

- The male inmate population is projected to reach 1,727 by 2017, an increase of 435 inmates or 33 percent over the next 10 years.
- There were 862 male inmates admitted to the prison system in fiscal year 2007, an average of 72 inmates per month.
- Of the 862 male inmates, 411 were admitted with a probation violation, 117 inmates were admitted with a parole violation, and 219 inmates were admitted for a methamphetamine charge.
- Of the 862 male inmates, 80 inmates were admitted to maximum security, 442 inmates were admitted to medium security, and 340 inmates were admitted to minimum security.
- The custody level of male inmates has remained relatively stable since 2004. The projected male inmate custody level distribution on January 1, 2017, will include 430 inmates in maximum security, 785 inmates in medium security, and 512 inmates in minimum security.
- The average age of inmates at admission in fiscal year 2007 was 31. The oldest person admitted was 76 years of age and the youngest was 16 years of age. Approximately 11 percent of the admissions were persons 21 years of age or younger and approximately 4.8 percent were 50 years of age or older.
- North Dakota has two different groups of male inmates--a higher custody, more violent group that stays in the system longer with some of the group affiliated with prison gangs, and a group that is less violent that goes through the prison system more rapidly.

CJI, Inc., noted existing issues at the State Penitentiary include outdated facilities with limited space, no fire access road, no direct housing support for treatment, and outdated locking systems in high security housing. The large housing units are difficult to supervise and do not allow for manageable groups and treatment programs. Existing issues at the MRCC include a number of substandard buildings, the distance to the Penitentiary, limited facilities for programs and support, and utilization of the facility for inmates with a rating higher than minimum security.

Projected Needs

CJI, Inc., evaluated the placement parameters for inmates at a remodeled facility or new facilities based on a facility design that would house 1,000 inmates.

CJI, Inc., determined it will take 1,000 operating beds and 85 flex beds for a total of 1,085 beds to safely house 1,000 inmates in a remodeled or new Bismarck area facility. CJI, Inc., defined "flex beds" as beds that are required for medical and disciplinary purposes, inmates on temporary leave status, and to provide prison administrators with flexibility in moving inmates within and between facilities. There are currently 660 operating beds and 52 flex beds at the State Penitentiary and MRCC.

CJI, Inc., determined the capacity for the following major inmate program needs and service requirements should be increased to address the anticipated increase in inmates:

- Mental health interventions and support.
- Substance abuse treatment.
- Vocational training.
- Employment skills development.
- Reentry and transitional preparations.
- Gang renunciation.
- Cognitive skills (countering criminal thinking).

CJI, Inc., determined a remodeled or new facility should be contemporary and focus on reentry and other programs that are essential in today's environment. CJI, Inc., noted a remodeled or new facility will require additional staff because of the increase in inmates that will be housed at the facility.

Site Evaluations

CJI, Inc., identified five sites being considered for a new correctional facility--the State Penitentiary site, the MRCC site, a site adjacent to the Bismarck landfill, a site near the Bismarck airport, and the Sunny Farm site (Morton County). CJI, Inc., presented the following information on each site:

1. State Penitentiary site - The site is owned by the state, zoned for public use, and consists of 225.34 acres. Part of the acreage is used by the Game and Fish Department, State Department of Health, Family Forest, State Water Commission, and a railroad easement. The site contains 20.2 acres of wetlands and 39.9 acres in the floodplain. Existing environmental constraints include the Hay Creek 100-year floodplain, drainage areas, freshwater wetlands, and the Family Forest. Existing utilities include 6-inch and 12-inch waterlines, an onsite sewer pumping station and force main to Bismarck's 18-inch gravity system, three-phase electrical power, and a 4-inch natural gas line.
2. Missouri River Correctional Center site - The site is owned by the state, zoned for public use, and consists of over 985 acres. The site contains 121.4 acres of wetlands and 905 acres in the floodplain. Existing environmental constraints include the Missouri River 100-year and 500-year floodplains, freshwater wetlands, and a potential habitat for endangered species. Existing utilities include a six-inch waterline, an onsite sewer pumping station and three-inch force main to Bismarck's system, three-phase electrical power, and a four-inch natural gas line.
3. Landfill site - The site is in the northeast quadrant of the city of Bismarck, owned by the city, zoned for public use, and consists of 200 acres. The site contains 21.5 acres of wetlands. Existing environmental constraints include a drainage course and freshwater wetlands. There are no utilities immediately adjacent to the site but there is a large overhead electrical transmission line for which an easement exists that crosses over the site, a 12-inch waterline 2,500 feet from the site, an 18-inch sewerline 4,000 feet from the site, and a 4-inch natural gas line 1,000 feet from the site.
4. Airport site - The site is owned by the city of Bismarck, zoned for public use with an internal portion zoned for agriculture, and consists of 308.4 acres. The site is used for agriculture and sludge disposal. The site surrounds a 10-acre plot owned by the United Tribes Technical College, which contains the former lagoon site for the college. The site contains 17.6 acres of wetlands and 62.6 acres of floodplain. Existing environmental constraints include the Apple Creek 100-year and 500-year floodplains and freshwater wetlands. Existing utilities include a 24-inch waterline along Airway Avenue, a 10-inch gravity sewerline 3,000 feet from the site that serves a National Guard facility, a three-phase electrical circuit adjacent to the site on 48th Street, and a 6-inch natural gas line 1,000 feet from the site along 48th Street.
5. Sunny Farm site - The site is owned by the state, zoned for public use with an internal portion zoned for parks and open space greenways, and consists of 1,419.37 acres. The site is used for the Youth Correctional Center, agriculture, open space, and a gravel pit/quarry operation. The site contains 110 acres of wetlands and 108 acres of floodplain. Existing environmental constraints include drainage course, freshwater wetlands, and a potential habitat for endangered species. Existing utilities for the city of Mandan end at the Heart River near Highway 10. There is a 12-inch waterline on the west side of the river 13,000 feet from the site, a 10-inch sewerline on the east side of the river 14,000 feet from the site, a three-phase overhead electrical line along Highway 10 within 5,000 feet of the site, and a 3-inch natural gas line 5,000 feet from the site.

The committee toured the State Penitentiary, MRCC, and other sites under consideration for placement of a correctional facility.

Model Facility Design Concept

CJI, Inc., developed an "ideal" model facility design concept to define the functional component needs of a replacement facility on a new site and a reuse/expansion of the existing penitentiary facility. The facility configuration for the model design concept was determined by classification distribution, available site area, environmental factors, and current facility history.

The model design concept includes approximately 614,905 building gross square feet, a combination of single-cell and double-cell units, and will accommodate full education, vocational, and industry program capability for 90 percent of the inmate population. (CJI, Inc., noted 10 percent of the inmate population typically is not in programs due to being uncooperative or on medical or temporary leave.) The model design concept complies with American Correctional Association standards and focuses on safe and secure operations.

Cost-Benefit Analysis

CJI, Inc., reviewed the following cost-benefit analysis for the reuse/expansion of the existing penitentiary and a new facility at each site under consideration:

Evaluation Criteria	Reuse/ Expansion	New Facility Sites						
		State Penitentiary	MRCC	Landfill Site	Airport Site	Sunny Farm Site 1	Sunny Farm Site 2	Sunny Farm Site 3
Total project cost	$201,000,000	$270,100,000	$279,400,000	$274,800,000	$269,700,000	$273,500,000	$281,200,000	$278,400,000
20-year operating costs	855,900,000	795,200,000	795,200,000	795,200,000	795,200,000	795,200,000	795,200,000	795,200,000
20-year life-cycle cost	$1,056,900,000	$1,065,300,000	$1,074,600,000	$1,067,000,000	$1,064,900,000	$1,068,700,000	$1,076,400,000	$1,073,600,000
Land acquisition	**Best**	Better	**Best**	Fair	Fair	**Best**	**Best**	**Best**
Natural resource impacts	**Best**	Good	Fair	Fair	Good	Better	Better	Better
Cultural resource impacts	Better	Better	Better	Better	Good	Good	Good	Good
Offsite improvements	**Best**	**Best**	Fair	Good	Better	Fair	Fair	Fair
Community impact	Better	Better	Fair	Fair	Better	Good	Good	Good
Accommodate footprint	Better	Fair	Better	Fair	Better	Better	Better	Better
Site improvements	**Best**	Better	Fair	Fair	Better	Better	Fair	Fair
Meets basic needs	Good	Better	Better	Better	Better	Better	Better	Better
Working environment	Good	Better	Better	Better	Better	Better	Better	Better
Program delivery capability	Good	Better	Better	Better	Better	Better	Better	Better
Avoids disruption to ongoing operations	Good	Better	Better	Better	Better	Better	Better	Better
Future expansion capability	Good	Better	Better	Better	Better	Better	Better	Better
Housing/ operational fit	Fair	Better	Better	Better	Better	Better	Better	Better
Phasing capability	**Best**	Fair	Fair	Fair	Fair	Fair	Fair	Fair
Ease of implementation	Better	Good	Good	Fair	Fair	Fair	Fair	Fair
Transition/ activation	Better	Good	Good	Good	Good	Good	Good	Good
Modifiable project	**Best**	Good	Good	Good	Good	Good	Good	Good
Addresses urgent needs quickly	**Best**	Fair	Fair	Fair	Fair	Fair	Fair	Fair

Consultant's Conclusions

CJI, Inc., reached the following conclusions regarding the correctional facility review study:

- Dated facilities have made prison operations difficult to manage and costly to maintain, and the facilities are limited in their ability to provide essential services;
- The State Penitentiary is operating at a safe and reasonable capacity;
- The forecasted increases in inmate populations cannot be accommodated with the beds currently available;
- Current and future needs can be met by adopting the recommended option; and
- The sooner the state initiates action on the recommended option, the less costly it will be to implement.

Consultant's Recommendations

CJI, Inc., made the following recommendations regarding the correctional facility review study:

- Remodel and reuse the existing State Penitentiary;
- Replace MRCC with a minimum security unit adjacent to the State Penitentiary; and
- Use an expedited schedule to implement the process either as a single complete project or a three-phase project.

Standard and expedited implementation schedules for a phased approach and a complete project approach are summarized below:

Standard Implementation Schedule - Project Begins July 2009					
	Phased Approach				
	Phase 1	Phase 2	Phase 3	Total	Complete Project Approach
Cost	$80,937,011	$100,971,061	$26,800,000	$208,708,072	$200,972,520
Start construction	July 2010	August 2011	August 2013		July 2010
Earliest occupancy	September 2012	October 2013	April 2015		November 2012
Net gain in beds	155	96	272	523	523
Total beds[1]	867	963	1,085	1,085	1,085

[1]Total beds include MRCC beds. The Missouri River Correctional Facility is relocated to the Penitentiary site during Phase 3.

Expedited Implementation Schedule - Project Begins July 2008					
	Phased Approach				
	Phase 1	Phase 2	Phase 3	Total	Complete Project Approach
Cost	$77,041,751	$100,584,702	$26,700,000	$204,326,453	$191,300,000
Start construction	July 2009	August 2011	August 2013		July 2009
Earliest occupancy	September 2011	October 2013	April 2015		November 2011
New beds	155	96	272	523	523
Total beds[1]	867	963	1,085	1,085	1,085

[1]Total beds include MRCC beds. The Missouri River Correctional Facility is relocated to the Penitentiary site during Phase 3.

Tasks to be completed for each phase of the reuse/renovation plan under the phased approach are summarized below:

Phase 1	Phase 2	Phase 3
Replace East Cellhouse	Housing zone support[5]	Relocate MRCC to the State Penitentiary site
Construct new health services[1]	Expand visiting area[6]	
Construct new reception area[2]	Relocate laundry	
Construct new segregation housing[3]	Expand food service area[7]	
Construct new entry area	Expand vocational area	
Construct new central control	Expand Roughrider Industries	
Renovate administration areas[4]	Relocate staff services[8]	
	Expand outside warehouse	
	Make major renovations to existing spaces	
	Relocate laundry	

[1]Health services include the infirmary, dental services, a pharmacy, and an outpatient clinic for walk-in services.

[2]The reception area will be completely new and the existing orientation area will be used for the relocated therapeutic community housing unit for substance abuse.

[3]The segregation unit is located at the east end of the proposed complex. Placement of the segregation unit in this location permits up to 25 percent future expansion (256 beds).

[4]The administration building inside the security fence will remain in the same location but will be renovated. The outside administration building will be demolished and central office and facility administration components will be relocated to the renovated second and third floors of the inside administration building.

[5]Housing zone support includes space for inmate services adjacent to each of the housing units. Services include counseling, treatment, and recreation.

[6]A first floor addition of 6,500 square feet will be added to the west side of the inside administration building for visitor processing and a visitation area.

[7]The existing food services operation will remain in its current location but will be expanded for additional inmate dining space, food storage, and a vocational food service shop.

[8]Staff services will be relocated to the first floor of the inside administration building.

The committee received testimony from the Department of Corrections and Rehabilitation regarding the correctional facility review study. The Department of Corrections and Rehabilitation agreed with CJI, Inc.'s, recommendation for a remodel/expansion plan with a phased implementation with some modifications. The Department of Corrections and Rehabilitation indicated a plan similar to CJI, Inc.'s, Phase 1 plan could be implemented for $60 million to $70 million.

Hybrid Plan

The committee considered a hybrid plan which is similar to Phase 1 of the CJI, Inc., plan. The hybrid plan is estimated to cost $67 million, $13.9 million less than CJI, Inc., Phase 1 of the plan. The committee reviewed a comparison of correctional facility plans developed by CJI, Inc., to the hybrid plan. Estimated construction and renovation costs for each component of Phase 1 of the CJI, Inc., plan and Phase 1 of the hybrid plan are summarized below:

	CJI Phase 1					Hybrid Phase 1				
	Estimated Cost	New Beds	Cost Per Bed	Square Feet	Cost Per Square Foot	Estimated Cost	New Beds	Cost Per Bed	Square Feet	Cost Per Square Foot
New construction										
Medical unit	$5,201,000	29	$179,345	17,935	$290	$5,201,087	29	$179,348	17,935	$290
Segregation/detention[1]	10,644,000	120	$88,700	33,262	$320	7,408,482	102	$72,632	24,657	$300
Orientation/intake/classification[2]	7,601,000	112	$67,866	29,452	$258	8,891,960	175	$50,811	35,146	$253
General population[3]	7,120,000	128	$55,625	24,981	$285	5,181,957	125	$41,456	18,843	$275
Warehouse	N/A					1,147,826			10,435	$110
Visiting/entry[4]	1,433,000			6,572	$218	432,174			2,161	$200
Housing zone support[5]	2,664,000			10,655	$250	N/A				
New construction costs	$34,663,000					$28,263,486				
Gross factor (15%)	5,199,450			18,429		4,239,523			16,377	
Subtotal	$39,862,450					$32,503,009				
Construction contingency	3,986,245					3,250,301				
Total new construction	$43,848,695					$35,753,310				
Major renovation/remodel[6]	$3,404,000			13,278	$256	$3,805,360			18,295	$208
Relocate tower	N/A					305,760			130	$2,352
Renovation contingency[7]	680,800					411,112				
Site development[8]	5,606,000					4,100,000				
Site contingency	560,600					410,000				
Project soft costs[9]	10,820,019					8,957,108				
Total 2008 project costs	$64,920,114					$53,742,650				
Inflationary costs[10]	16,016,897					13,258,311				
Total 2011 project costs	$80,937,011	389	$208,064	154,564	$524	$67,000,961	431	$155,455	143,979	$465

[1]The hybrid plan anticipates 102 segregation beds will be sufficient for the next 10 years. The hybrid plan allows for future expansion of the administrative segregation unit if necessary.

[2]The hybrid plan includes 50 flex beds in the orientation/intake/classification unit that could be used for general population housing if necessary.

[3]The CJI, Inc., plan includes a dayroom area, multipurpose program area, and storage areas. The hybrid plan uses existing areas for these purposes.

[4]The CJI, Inc., plan proposes larger visiting/entry areas than the hybrid plan.

[5]The CJI, Inc., plan includes providing new housing zone support for the entire prison complex, which includes offices, interview rooms, zone storage, staff toilets, janitor closets, food staging areas, and hearing rooms. The hybrid plan continues to use existing housing zone support.

[6]The CJI, Inc., plan includes major renovation in Phase 1 for the facility administration building, central control, and food service areas. The hybrid plan includes renovation in Phase 1 for the first two floors of the facility administration building.

[7]The CJI, Inc., plan includes 20 percent for renovation contingencies. The hybrid plan includes 10 percent for renovation contingencies.

[8]Site development for the hybrid plan includes $1.8 million for demolition of the East Cellhouse.

[9]Both plans include 20 percent for project soft costs.

[10]Both plans include an inflationary rate of approximately 24.67 percent (calculated from February 2008 to the midpoint of construction in September 2011, at 8 percent for 2008 and 2009 and 6 percent thereafter).

The following schedule compares tasks to be completed in Phase 1 of the CJI, Inc., plan to Phase 1 of the hybrid plan:

	CJI Phase 1	Hybrid Phase 1
New medical unit	Yes	Yes
New orientation/intake/classification	Yes	Yes
New general population housing	Yes[1]	Yes
New segregation/detention units	Yes	Yes
New entry area	Yes	Yes
Housing zone support	Yes[1]	No
Renovate central control	Yes	Yes
Renovate facility administration area	Yes	Yes
New visiting area	Yes	Yes
New laundry	No[2]	No
Renovate food service	Yes[3]	No
Expand education/program area	No[4]	No
Expand industries	No[4]	No
Renovate staff services	No[5]	Yes
New outside warehouse	No[4]	Yes
Replace or upgrade MRCC	No[6]	No
Abandon/demolish East Cellhouse	No[7]	Yes

[1]Additional general population housing and housing zone support will be added in Phase 2 of the CJI, Inc., plan.

[2]A new laundry will be constructed in Phase 2 of the CJI, Inc., plan.

[3]Additional food service space will be constructed in Phase 2 of the CJI, Inc., plan.

[4]The education/program area, industries, and outside warehouse will be expanded in Phase 2 of the CJI, Inc., plan.

[5]The staff services area will be renovated in Phase 2 of the CJI, Inc., plan.

[6]The Missouri River Correctional Center will be relocated or upgraded in Phase 3 of the CJI, Inc., plan.

[7]The East Cellhouse will be abandoned and demolished in Phase 2 of the CJI, Inc., plan.

Table A at the end of this report shows the design concept of the CJI, Inc., correctional facility plan.

Table B at the end of this report shows the design concept of the hybrid plan.

Recommendation

The committee recommends Senate Bill No. 2030 to provide an appropriation of $25 million from the general fund and $42 million from the State Penitentiary land fund to the Department of Corrections and Rehabilitation for completing Phase 1 of the renovation and expansion project at the State Penitentiary as provided for in the hybrid plan.

Project Funding

Section 8 of House Bill No. 1015 (2007) provides for a transfer of $41 million from the general fund to the State Penitentiary land fund to be used for correctional facilities. The funds are appropriated to the Department of Corrections and Rehabilitation for a project authorized and approved under Section 10 of the bill and are available for construction for the 2007-09 biennium. All income earned on the fund must be retained by the fund.

Report to Emergency Commission

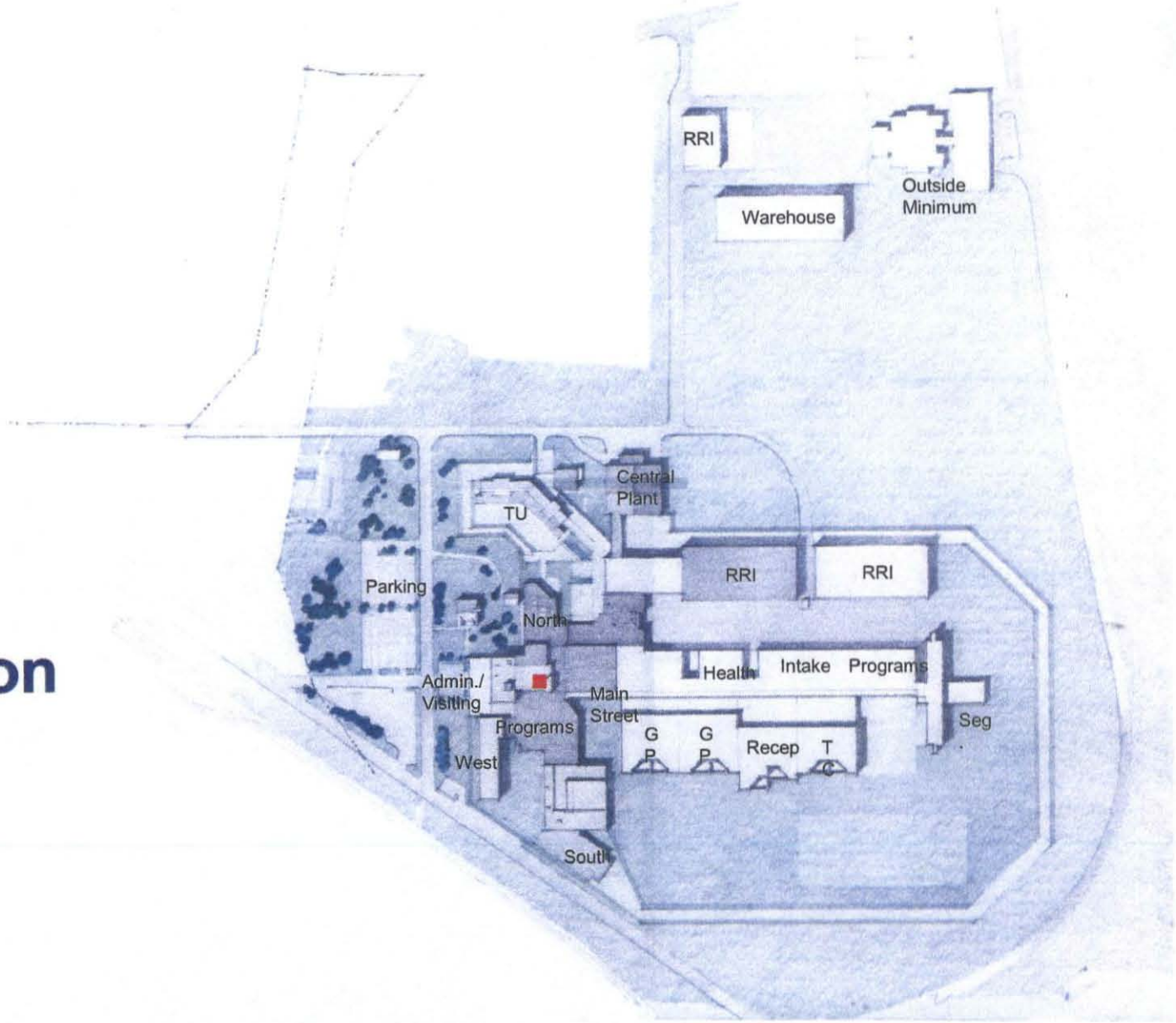
Section 10 of House Bill No. 1015 (2007) required the committee, before June 1, 2008, to forward the three facility concepts along with a recommendation for one of the three concepts to the Emergency Commission for the commission's consideration and authorization. The section also required the Emergency Commission, if the commission authorized one of the three concepts, to forward the authorized concept to the Budget Section of the Legislative Council. The Budget Section may approve or reject the concept as authorized by the Emergency Commission. An Attorney General's letter opinion (2007-L-08) dated June 6, 2007, was issued regarding the constitutionality of Section 10 of House Bill No. 1015. The opinion stated that if a court were to rule on the matter, it would likely determine that subsection 8 of Section 10 of the bill relating to Budget Section approval or rejection of a correctional facility concept is unconstitutional. Therefore, the Legislative Council at its June 6, 2007, meeting directed that any recommendation from the Emergency Commission regarding facility concepts be received by the Budget Section for informational purposes only rather than for approval or rejection under this section.

The committee forwarded the three correctional facility concepts contained in the CJI, Inc., March 19, 2008, correctional facility final report and recommendation for the remodel/expansion of the existing State Penitentiary facility concept to the Emergency Commission in April 2008. The Emergency Commission accepted the committee's report at its June 9, 2008, meeting. The committee's recommendation was distributed to the Budget Section for informational purposes only at its June 18, 2008, meeting.

INTERAGENCY AGREEMENT

The committee received a report pursuant to Section 2 of Senate Bill No. 2136 (2007), regarding services provided by the Department of Corrections and Rehabilitation relating to individuals at the State Hospital who have been committed to the care and custody of the executive director of the Department of Human Services. The committee learned that personnel from JRCC are providing training, consultation, and assistance to the personnel at the sexual offender unit at the State Hospital. The Department of Human Services continues to be responsible for the care and custody of individuals placed for evaluation or civil commitment and treatment at the unit. The committee learned that the State Hospital has implemented safety and security upgrades at the hospital, including fire safety measures, door control measures, and proper classification and placement of sexual offenders in appropriate treatment and security units.

Option 1
Reuse
Expansion
Concept

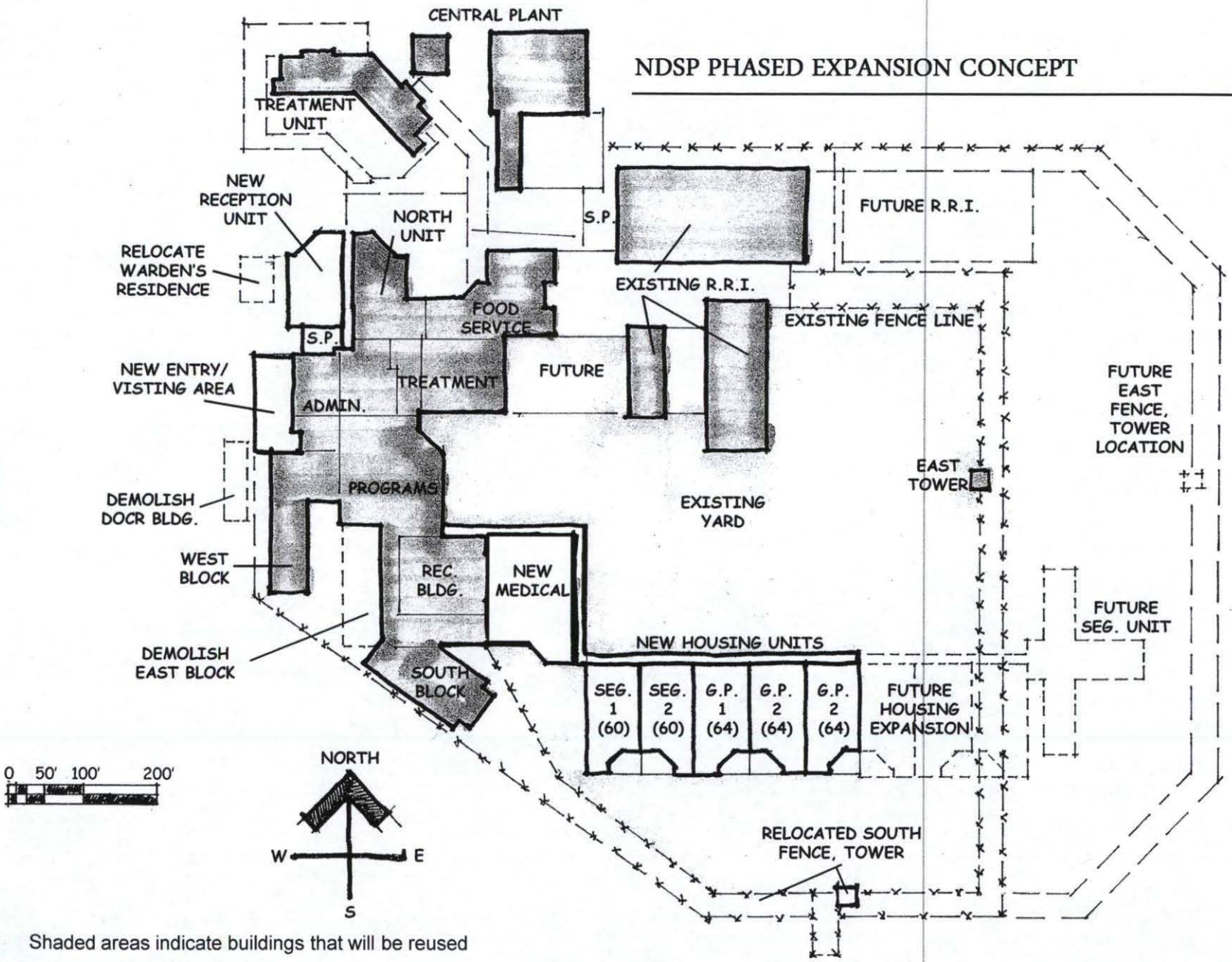


DMJM H&N

Parametrix, Inc.

TABLE A

NDSP PHASED EXPANSION CONCEPT



Shaded areas indicate buildings that will be reused

TABLE B

EDUCATION COMMITTEE

The Education Committee was assigned four studies. Senate Concurrent Resolution No. 4032 (2007) directed a study of ways in which schools and school districts can train teachers, counselors, and other school staff to better identify high-risk students and to provide programs designed to reduce the incidences of high-risk behaviors that can lead to suicide attempts. House Concurrent Resolution No. 3046 (2007) directed a study of ways in which various public and private entities can cooperate with families to promote healthy lifestyles for children and create awareness about the interplay of healthy lifestyle choices and educational success. Section 16 of Senate Bill No. 2030 (2007) directed a study of the short-term and long-term evolvement of regional education associations, including the feasibility and desirability of regional education associations becoming political subdivisions; whether teachers should be employed directly by regional education associations, and whether that employment should include bargaining rights, contract renewal and nonrenewal provisions, participation in the Teachers' Fund for Retirement, and participation in the state's uniform group insurance program; the impact that allowing regional education associations to hire teachers directly would have on the recruitment and retention of teachers currently employed by school districts and on teacher salary levels; whether teacher employment contracts, if offered by regional education associations, would have to parallel those of participating school districts with respect to common school calendars, annual or personal leave provisions, and other contractual benefits; the conduct of evaluations if teachers are employed directly by regional education associations, including who will conduct the evaluations, their frequency, and the criteria upon which the evaluations are to be based; the organizational structure of regional education associations, including the qualifications of administrative or supervisory personnel; the governance structure of regional education associations; and state level oversight. Section 11 of Senate Bill No. 2030 directed a study of the appropriateness and adequacy of high school curricula, with respect to preparing students for higher education and for the workplace, and an examination of curricular changes implemented in other states and expectations placed on students in other countries.

The Legislative Council also assigned to the committee the responsibility to receive periodic reports from the North Dakota Commission on Education Improvement and to receive reports regarding the financial condition of schools, school district employee compensation, student scores on recent statewide tests of reading and mathematics, requests for and waivers of accreditation rules, requests for and waivers of statutory requirements governing instructional time for high school courses, the failure of any school board to meet the statutory threshold for increasing teacher compensation, the status of the statewide longitudinal data system plan, the planning and development of an electronic course delivery approval process, the operations of regional education associations, and the status of payments to individuals who hold national board certification.

Committee members were Representatives RaeAnn G. Kelsch (Chairman), C. B. Haas, Lyle Hanson, Gil Herbel, Bob Hunskor, Karen Karls, Lisa Meier, David Monson, Phillip Mueller, Gary Sukut, Francis J. Wald, and John D. Wall and Senators John M. Andrist, Tim Flakoll, Layton W. Freborg, Gary A. Lee, and Carolyn Nelson.

The committee submitted this report to the Legislative Council at the biennial meeting of the Council in November 2008. The Council accepted the report for submission to the 61st Legislative Assembly.

IDENTIFICATION OF HIGH-RISK BEHAVIORS STUDY

Nationally, more than 30,000 individuals commit suicide each year. Suicide is the 11th leading cause of death among individuals of all ages and the 2nd leading cause of death among individuals between the ages of 10 and 24. In North Dakota, from 1994 through 2003, 797 individuals took their own lives. This averages out to almost 80 suicides per year and almost 7 suicides each month. Attempted suicides during that same period averaged 382 per year, or more than 1 per day. Most of those individuals required serious medical attention at an average cost of $7,515. The highest rates of suicide during that period were found in the 15 to 24 age group and the 45 to 54 age group.

Risk Factors

Risk factors vary with age, gender, and group, and may even change over time. Among the younger group, risk factors include suicidal thoughts; psychiatric disorders such as depression, impulsive aggressive behavior, and bipolar disorder; certain anxiety disorders; drug and alcohol abuse; and previous suicide attempts. Often, risk factors occur in combination. Situational stress and access to firearms appear to increase the risk of suicide. In North Dakota many of the risk factors become even more challenging when coupled with geographic isolation and limited availability of or limited accessibility to mental health services.

Youth Risk Behavior Survey

In 1990 the United States Centers for Disease Control and Prevention developed a youth risk behavior survey. The survey was designed to monitor risk behaviors that contribute to the leading causes of death, disability, and social problems and, in turn, to serve as a springboard for the initiation of effective responses. The survey focuses on six risk factors--tobacco use, dietary behaviors, physical activity, alcohol and drug use, sexual behavior, and violence.

North Dakota began participating in the survey in 1995. During the spring of 2007, more than 16,000 North Dakota students between grades 7 and

12 participated in the survey. Due to the random, research-based selection process, the results allow the making of inferences about all North Dakota students in the stated grades. Among the conclusions of the report are the following:

- Nearly 17,000 North Dakota high school students have tried cigarettes and almost 6,200 of those students smoked their first cigarette before the age of 13.
- In 2007 there were 10 traffic fatalities involving children between the ages of 10 and 19. Nine of those traffic fatalities involved alcohol.
- Thirty-four percent of seventh grade and eighth grade students and 26 percent of high school students were bullied on school property, by other students, at least once during the past year.
- Twenty-eight percent of North Dakota high school students drank alcohol or used drugs before their last sexual encounter.
- Seven percent of North Dakota high school students had been forced to have sexual intercourse against their will.
- Nine percent of North Dakota high school students indicated that they had been hit, slapped, or physically hurt by a boyfriend or girlfriend during the last year.

The committee was told that school personnel often see alcohol use, drug use, sexual activity, bullying, and depression among students. School personnel understand that such high-risk behaviors are evidence that students are hurting in some way and that such behaviors can lead to suicide. Unfortunately, school personnel are seeing such behavior not just among older students but among younger students as well.

North Dakota Adolescent Suicide Prevention Project

In 1999, faced with data showing that the suicide rate for North Dakotans in the 10 to 24 age group was almost twice the national average, adolescents and young adults became the primary focus for North Dakota's suicide prevention efforts. The initial state plan focused on three strategies--awareness and education, increased treatment access, and resiliency and asset building. By 2001 the focus shifted to the development of strategies in five core areas--infrastructure, youth development, professional education, public education, and evaluation. Several part-time suicide prevention coordinators were hired in 2002 and by 2003 eight rural and tribal mentoring coordinators had been hired. Mentoring programs, support groups, screening efforts, crisis response, and teen-led efforts were put in place.

Since the inception of the North Dakota Adolescent Suicide Prevention Project, more than 40,000 North Dakotans have received training in suicide prevention strategies. This number includes 700 teen leaders, 8,000 professionals, and 1,500 faith-based partners. Thirty-five percent of the project's activities take place in tribal settings. During the project's first five years, there was a 47 percent reduction in the number of suicides attributable to the 10 to 19 age group and a 32 percent reduction attributable to the 10 to 24 age group. The American Public Health Association awarded the 2005 Public Health Practice Award to the North Dakota Adolescent Suicide Prevention Project in recognition of its innovative and creative approaches as well as its role in reducing the number of suicides among young North Dakotans.

National Masonic Foundation for Children - Masonic Model Student Assistance Program

The National Masonic Foundation for Children is a nonprofit charitable organization that seeks to help adolescents lead productive, useful, and healthy lives by preventing the use and abuse of alcohol and drugs. The flagship program of the Masonic Foundation is the Masonic Model Student Assistance Program. Established in 1986, this program consists of an intensive three-day training workshop for teachers. Generally, the workshop is limited to between five and eight teachers. The focus is on learning how to identify, intervene with, and create appropriate referrals for students who may be at risk for substance abuse, depression, violence, or suicide. The program involves practice sessions that are designed to simulate real-life events, along with presentations on subjects such as chemical dependency, depression, suicide, conflict, anger, violence, communication skills, intervention, family dynamics, enabling, life skills development, treatment and aftercare, and group processes. Participants leave the training with a specific plan for behavioral interventions and a system for implementing the program in their schools.

In North Dakota the cost of this training, including room and board for the duration of the program, is approximately $4,000 per teacher and is covered by the sponsoring Masonic Lodge. The cost of transportation to Bismarck and the cost of substitute teachers is the responsibility of the school district. The committee was told that several of the cancellations this year came about as a result of school districts claiming that they did not have money to spend for transportation and substitutes.

Conclusion

Suicide is a complex phenomenon and childhood suicide is a tragedy of unfathomable proportions. The psychological and social impact of a suicide both on the individual's family and on those who shared a school or place of work is immeasurable. Although far from being understood, suicide is recognized as resulting from a complex interaction of biological, genetic, sociological, and environmental factors. It is also recognized as being potentially preventable. The committee concluded that tools and programs for the prevention of suicide are available and are being used in North Dakota with significant success. The committee also recognized that not all of the tools and programs are equally available and equally accessible across the state. North Dakota's geographic vastness, coupled with its sparsity of population, creates service delivery challenges in many venues, including this one.

PROMOTION OF HEALTHY LIFESTYLES FOR CHILDREN STUDY

Background

It is well-documented that numerous medical conditions and chronic diseases stem from lifestyle decisions. Overeating and inactivity, for example, can lead to heart disease, diabetes, some cancers, stroke, high cholesterol, and arthritis. Nationwide, increasing trends in obesity alone account for more than 38 percent of the growth in spending for diabetes, 22 percent of increased spending for high cholesterol, and 41 percent of increased spending for heart disease. These avoidable conditions and chronic diseases create financial burdens for families, communities, employers, and governments with respect to direct health care expenses, decreased productivity, and increased absenteeism from both work and school.

Many states have launched wellness campaigns and undertaken a variety of promotional efforts designed to encourage healthy lifestyle choices. Although it is recognized that individuals must make the commitment to modify their lifestyle choices and to be healthy, it is also recognized that such wellness efforts are more likely to be successful if they include strategies that reach out to people in their homes and communities and support the integration of healthy habits into everyday life.

The phrase "healthy lifestyle" is frequently referenced in everyday conversations and in the media. Precisely what is meant by a healthy lifestyle is, however, somewhat elusive. Because the committee was given the charge of determining ways in which healthy lifestyles can be promoted, its first order of business was to define that which is to be promoted.

The committee determined that healthy lifestyles appear to fall into one of two categories. The first category includes clinical issues, such as the use of tobacco, alcohol, and illegal substances; proper nutrition; daily exercise; etc. The second category is a more holistic approach and includes both physical and mental health. The second category recognizes that many things go into creating a healthy lifestyle. Therefore, in addition to the aforementioned components, this category includes positive relationships and livable environments. In this category, a healthy lifestyle is thought of as a purposeful and productive lifestyle and encompasses work, school, play, worship, and neighborhoods.

North Dakota Initiatives

Agency Efforts

In North Dakota the promotion of healthy lifestyles falls principally within the purview of two agencies--the State Department of Health and the Parks and Recreation Department. The State Department of Health has a variety of divisions addressing a variety of health-related issues.

- The Division of Cancer Prevention and Control works to increase awareness by engaging in partnerships, collecting and reporting data, ensuring quality data, providing public and professional education, and ensuring the availability of quality services for screening, treatment, rehabilitation, and palliative care. Its programs include the cancer registry, the comprehensive cancer control program, and the Women's Way program.
- The Division of Chronic Disease works to promote disease self-management and healthy behaviors, increase disease risk awareness, and support quality health care. Its efforts include the diabetes prevention and control program, the heart disease and stroke prevention program, and the North Dakota state asthma workgroup.
- The Division of Family Health provides funding, technical assistance, training, needs assessments, educational materials, and other resources to local public health units, schools, and other public and private health service providers. It provides abstinence-only education, breastfeeding programs, child and adolescent health services, coordinated school health programs, early childhood programs, family planning programs, programs dealing with fetal alcohol syndrome and fetal alcohol effects, genetics programs, head lice prevention and control programs, infant care programs, infant massage, maternal and child health block grants, newborn home visiting programs, newborn screening programs, optimal pregnancy outcome programs, oral health programs, pregnancy programs, pregnancy-related surveys, sudden infant death syndrome programs, and various women's health services.
- The Division of Injury Prevention and Control provides policy development, data surveillance, public awareness, professional training, funding, advocacy, and partnerships to reduce the frequency and severity of intentional and unintentional injuries. Its programs include the injury and violence prevention program, the child passenger safety program, the domestic violence and rape crisis program, the leadership in educational administration development program, and the suicide prevention program. It also disseminates information on topics such as bicycle safety, child fatalities, home safety, poison prevention, playground safety, product safety, seasonal safety, and the prevention of shaken baby syndrome.
- The Division of Nutrition and Physical Activity promotes healthy eating and physical activity to reduce weight and to prevent obesity and related chronic diseases. Its responsibilities include maternal and child nutrition programs and the special supplemental nutrition program for women, infants, and children.
- The Division of Tobacco Prevention and Control provides support for local, state, and tribal programs to reduce and ultimately prevent tobacco use.

The Parks and Recreation Department is responsible for the operation of the state parks and is directly or

indirectly involved in making available a variety of outdoor activities, including cross-country skiing, hiking and horse trails, bicycling, snowmobiling, off-roading, birding, and nature preserves. As a result of its efforts, paved trails exist in most of this state's major cities and unpaved trails exist at Turtle River State Park, Lake Metigoshe State Park, and the Sheyenne National Grassland. In addition, this state boasts the renowned multiuse Maah Daah Hey Trail in western North Dakota.

The Parks and Recreation Department serves as the host agency for the CANDISC Bicycle Tour and the Prairie Rose State Games and is the administering agency for the land and water conservation fund, which is a federal program that provides 50/50 matching grants to states and their political subdivisions for the acquisition and development of public land for open space and outdoor recreation purposes. In the past it provided funding for playgrounds and ballfields, trails, parks, and access to lakes and rivers.

A third entity that is involved in the promotion of healthy lifestyles in this state, although to a lesser extent than the State Department of Health and the Parks and Recreation Department, is the Department of Public Instruction. Working under a Centers for Disease Control and Prevention grant, the Department of Public Instruction maintains a focus on health and physical education curricula and provides various school health services that are designed to ensure access or referral to primary health care providers. Its efforts also include school nutrition services, healthy school environments, education and fitness activities for school staff, and integrated school, parent, and community approaches that are designed to enhance the health and well-being of students.

Healthy North Dakota

Healthy North Dakota is a statewide coalition of partners and stakeholders seeking the identification of common strategies to address health issues and promote wellness. The interests of the parties and stakeholders include cancer, diabetes, immunizations, oral health, nutrition, physical activity, healthy weight, health disparities, injury prevention, worksite wellness, school health programs, and third-party payers, as well as reducing and preventing tobacco use.

Healthy North Dakota operates under the direction of a coordinating committee consisting of the liaisons or chairmen from each of the participating committees, coalitions, and focus groups, and it relies on an advisory group consisting of individuals representing the University of North Dakota (UND), the UND Center for Rural Health, the UND School of Medicine and Health Sciences, North Dakota State University (NDSU), the NDSU Extension Service, the Indian Affairs Commission, the North Dakota Chamber of Commerce, Blue Cross Blue Shield of North Dakota, the Governor's office, and the State Department of Health, as well as various consumers.

North Dakota Schools

Just as medical conditions and chronic diseases stemming from lifestyle choices plague adults, so too do they plague children. Although the literature indicates that the relationship between unhealthy lifestyles and lower academic achievement is not fully understood, issues of self-esteem, depression, and health problems that are associated with such lifestyles are known to be contributing factors to lower academic achievement. One of the things that can be stated with certainty is that the childhood impulse to imitate is very strong and, consequently, the best way to encourage healthy lifestyle choices in children is to be their example. Because students spend more time in school than in any other social institution, schools afford unparalleled venues for the promotion of wellness.

In school settings nutrition information and opportunities to discuss and participate in physical activities can be incorporated in science, mathematics, English language arts, and social studies classes. Guidelines for food and drinks sold in schools and at school-sponsored events can be established, and afterschool programs that include physical activity can be encouraged. Many school districts in the state recognize the value of healthy students and have not hesitated to allocate time and resources to this cause. Others have been less willing to make that commitment.

The committee was told that, as a state, we think of our students and our school settings as "wholesome." However, teachers, administrators, and a school resource officer who is also a police officer, shared stories of students using and abusing alcohol, both during and outside school hours; arrests for marijuana possession; the presence in our schools of methamphetamines, cocaine, mushrooms, ecstasy, and heroin; and the use of inhalants. They spoke of sexual activity among students, including such activity on school property and during the school day. They indicated that sexual activity was occurring not only at the high school level but at the middle school level as well. They also indicated that significant numbers of students were involved with multiple partners. The committee learned that the phrase "friends with benefits" references an "involvement" in which there is no dating relationship and no intention of having a dating relationship, and the committee was told of students labeling themselves in Internet exchanges as "A3s"--anytime, anyplace, anywhere.

Even those students who do not engage in illegal activities frequently skip meals, receive inadequate amounts of sleep and exercise, and consume excessive amounts of highly caffeinated energy drinks. Students from all walks of life have to cope with a variety of issues, including academic, familial, economic, and social challenges. Often their limited experiences, coupled with their adolescent perceptions, result in less than desirable outcomes. The committee was told that, in many cases, adolescents simply do not have the facts about options that they encounter and do not understand the consequences of their choices. An increase in

school-based health education was suggested as a way to address these situations.

Recommendation

The committee recommends House Bill No. 1028 to require that every student complete, as a condition of high school graduation, at least one-half unit of health education. The North Dakota Century Code currently requires that a student successfully complete, among other courses, "[o]ne unit of physical education, which may include up to one-half unit of health." Less than half of the state's school districts require any health education as a condition of graduation. Of those that do, it is not known whether the health education component constitutes one-quarter unit or one-half unit of a student's four-year high school career. One-quarter unit of health education amounts to fewer than 20 hours of instruction out of the average student's 2,400 high school instructional hours.

Unlike the health classes of the past, which focused primarily on hygiene issues, today's health education classes address social interactions; the importance of sleep; work habits; study habits; bullying; tobacco, drug, and alcohol use; depression and suicide; anger; anxiety; the development of resistance skills; gangs; cliques; dating; abstinence; problem-solving; and being part of a family. The committee was told that, historically, health education was somewhat frowned upon out of concern that it might work against parental values or that it might interfere with local control and local curricular decisions.

Those not in favor of imposing a health education requirement suggested that, under current law, a student could graduate with, in essence, one-half unit of physical education and one-half unit of health, whereas the concept considered by the committee would require each student to take, and consequently each school to offer, one unit of physical education and one-half unit of health. The committee recognized, however, that under current law a school already is required to make available to each student one-half unit of health and one-half unit of physical education during each school year. The committee also recognized that school district concerns about having to incur added costs by hiring health education teachers was unfounded. The teaching of health education is within the purview of individuals licensed to teach science, physical education, and family and consumer science.

The committee determined that today's adolescents are the workers and leaders of tomorrow. Providing those adolescents with educational opportunities that will help them understand their world, the myriad of choices available to them, and the consequences of those choices, will impact their personal health, longevity, and productivity, and, ultimately, our society's well-being.

REGIONAL EDUCATION ASSOCIATIONS STUDY

Background

Article VIII, Section 1, of the Constitution of North Dakota directs the Legislative Assembly to provide 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." The constitutional rationale behind this directive was that a "high degree of intelligence, patriotism, integrity and morality on the part of every voter in a government by the people" is "necessary in order to insure the continuance of that government and the prosperity and happiness of the people . . . ." The constitution goes on to direct that the system be uniform throughout the state and requires that in "all schools 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." The Legislative Assembly also is directed 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."

Over the years the constitutional directives spawned legislative directives, and the school districts have responded--sometimes singly and sometimes in concert. Challenges have been a part of this state's educational landscape since statehood and they show no sign of depletion. In fact, with each successive school year, the decline in the number of students, coupled with this state's vast geography, has made it more and more difficult for a single school district to provide educational services in an effective and efficient manner.

North Dakota Statutory Requirements

Faced with the unpopularity of wholesale school district consolidation, the Legislative Assembly in 2003 enacted legislation that formally recognized education associations governed by joint powers agreements and directed that the first $250,000 of any payments remaining in the state school aid line item after completion of all statutory obligations be set aside as reimbursement for those associations.

Further changes occurred during the 2005 legislative session and in 2007 the Legislative Assembly deemed the associations worthy of a new name and a separate chapter in the North Dakota Century Code. Joint powers associations became regional education associations.

Under North Dakota Century Code (NDCC) Chapter 15.1-09.1, a regional education association must:

1. Contain a land mass of at least 5,800 square miles;
2. Contain a land mass of at least 4,500 square miles and consist of at least 12 school districts;
3. Contain a land mass of at least 4,000 square miles and serve at least 3,000 students; or
4. Contain a land mass of at least 1,500 square miles and serve at least 7,500 students.

A regional education association must maintain a joint operating fund and offer various administrative functions and student services. Districts must agree to participate in at least five administrative functions. These may include business management, career and technical education services management, curriculum mapping or development, data analysis, federal program

support, federal title program management, grant writing, school improvement, school safety and environment management, special education services management, staff development, staff retention and recruitment, staff sharing, technology support, and any other functions approved by the Superintendent of Public Instruction.

Districts also must agree to participate in at least five student services. These may include advanced placement classes, alternative high schools or alternative high school programs, career and technical education classes, counseling services, common elementary curricula, distance-learning classes, dual-credit classes, foreign language classes, library and media services, summer programs, supplemental instruction programs, and any other services approved by the Superintendent of Public Instruction. Through its joint powers agreement, each regional education association has the ability to establish the number of members on its governing board and the manner in which those members are determined. Each governing board member must be serving on the board of a participating school district. The same criteria applies to a designee.

Existing Regional Education Associations

With the 2008 consolidation of the South Central and South East Education Cooperatives, there are eight regional education associations in the state:

- Great North West Education Cooperative.
- Mid Dakota Education Cooperative.
- Missouri River Education Cooperative.
- North Central Education Cooperative.
- Northeast Education Services Cooperative.
- Roughrider Education Service Program.
- Red River Valley Education Cooperative.
- South East Education Cooperative.

Each regional education association is served by a lead administrator who is a superintendent or an assistant superintendent and by a coordinator. One hundred seventy-nine of the state's 192 school districts (93.2 percent) are members of a regional education association and, in that capacity, provide services to 98 percent of the state's public school students. The following districts are not participating in a regional education association:

- Bakker Public School District.
- Bowman-Scranton Public School District.
- Carrington Public School District.
- Earl Public School District.
- Gackle-Streeter Public School District.
- Horse Creek Public School District.
- Kensal Public School District.
- Kulm Public School District.
- Max Public School District.
- New Rockford-Sheyenne Public School District.
- Oberon Public School District.
- Robinson Public School District.
- Yellowstone Public School District.

Funding

During the 2007 legislative session, funding for regional education associations was increased to $3 million. Of that amount, $1 million was to be distributed during the 2007-09 biennium on a per student basis at the same time and in the same manner as other state aid payments. The remaining $2 million was to be provided as a contingent distribution, calculated on a per student basis, at the conclusion of the 2007-09 biennium. The Superintendent of Public Instruction estimates that the state aid formula adopted during the 2007 legislative session will in fact distribute all the money that had been appropriated to kindergarten through grade 12 education and that, therefore, contingency funds will not be available for distribution to regional education associations or any other recipients at the end of the biennium. This places regional education associations in the position of asking their member school districts to redirect some of the $2 million that had been sent to the school districts as part of the formula.

Comparable Organizations in Other States

Regional education associations have more than 500 counterparts in 44 other states. They are referred to elsewhere as area service agencies, cooperative education service agencies, educational service districts, intermediate service centers, regional service centers, and service cooperatives. Regardless of their appellation, they tend to evolve when school districts have familiar challenges--limited resources, declining student populations, and increasing demands for accountability. Some are involved in the direct provision of services to students, while others are involved only in providing administrative and operational support to districts. The activities of comparable entities include professional development, leadership training, personnel recruitment and screening, teacher training, early childhood programs, programs for gifted students, programs for students with special needs, services to incarcerated students, adult education, vocational education, student testing and evaluations, media and instructional library services, technology services, computer and audiovisual repair, telecommunications and distance-learning, cooperative purchasing, printing services, insurance services, safety and risk management services, and energy management services.

The entities' governance structures are as varied as their individual roles and missions. In five states the boards are elected by the general public. Sixteen states allow for the appointment or election of board members by those serving on local school boards. Twenty-two states require that school district superintendents constitute the boards. Arizona operates without a board, and Hawaii, which has a unified school district, provides for governance by the state's chief school officers.

Across the country these entities provide assistance to 87 percent of all public school districts and 43 million students. The committee was told that while some suggest these entities are nothing short of large

bureaucracies, it is preferable to view them as educational infrastructure. They allow for cost-efficient partnerships and the provision of high-quality services on behalf of districts that often lack the critical mass to deliver such services on their own.

Committee Consideration

North Dakota's regional education associations frequently are mentioned as having a critical role in the future delivery of services that many believe should be made available to all students, as well as in the provision of support and assistance to schools and school districts. Although the committee was charged with determining whether regional education associations should become political subdivisions and whether they should function as school districts for purposes of employing teachers, the committee determined that those deliberations would evolve in time. Committee members believed it was much more important to undertake an examination of the way regional education associations are configured, governed, and operated and whether that configuration, governance structure, and modus operandi will allow them to fulfill some or all of the expectations being placed upon them. The committee considered a bill draft that suggested potential changes to eight different aspects of the configuration, governance, and operation of the state's regional education associations.

Number of Regional Education Associations

The bill draft would have required all of the state's regional education associations to encompass at least 6,000 square miles. This would have eliminated the Mid Dakota Education Cooperative, which is located west of Minot. At 2,341 square miles, it is the smallest of the state's regional education associations. The committee was told that such a move would increase travel on the part of students and staff affiliated with that association. The committee was also told that, in determining how many associations are necessary, it would be equally appropriate to consider the number of students served by each.

Contiguity of School Districts Within a Regional Education Association

The bill draft would have removed the requirement that all school districts in a regional education association be contiguous to each other. The law provides that if districts are not contiguous to each other, the Superintendent of Public Instruction must verify that "the participating districts can provide sound educational opportunities to their students in a fiscally responsible manner without injuring other school districts or regional education associations and without negatively impacting the ability of other school districts or regional education associations to provide sound educational opportunities to their students in a fiscally responsible manner."

The committee was told that while contiguity was not necessary, issues regarding contiguity had not been encountered.

Size of Governing Boards

The bill draft would have limited the size of regional education association governing boards to five, seven, or nine members, thereby paralleling school boards. The committee was told that some regional education association boards include representation from all of their participating districts. However, while 20- or 30-member governing boards might seem unworkable to some, the committee was told that this allows for broad participation and does not place on any one individual the responsibility for determining what is appropriate for another school district.

Membership of Governing Boards

Under current law, all members of a regional education association's governing board must be school board members. Designees are permitted, but they too must be school board members. The bill draft would have allowed for a governing board that consisted of both school district superintendents and school board members.

The committee was told that with turnover in the superintendent ranks, having a governing board made up solely of school board members allows for continuity. In addition, members of neighboring school boards had the opportunity to visit with each other at least four times each year and discuss the state of their individual districts. Superintendents on the other hand suggested that they discuss issues and forward them to the regional education association board members for action. The reconfiguration of the board, they said, would eliminate a step in the process and allow for their direct participation.

Inclusion of Ex Officio Members

Under current law, the regional education associations are permitted to include ex officio members on their boards. The bill draft would have replaced this provision with the requirement that the boards include the president of a college situated within the boundaries of the association. The committee was told that the issue of ex officio members was not of particular concern.

Term Limits

The bill draft would have established three-year terms for regional education association board members and would have provided that members may not serve more than two consecutive terms. The committee was told that if individuals are interested in serving as board members, they should not be precluded from doing so. Furthermore, the committee was told most people, of their own volition, elect not to serve significantly longer than the suggested term limit.

Compensation and Reimbursement of Board Members

Under current law, a regional education association may not compensate its board members for attending meetings and may not reimburse board members for any expenses incurred in attending board meetings. An

exception is made for members who perform extraordinary service, i.e., traveling to and attending a national meeting or convention.

The bill draft would have allowed board members to be reimbursed for expenses incurred in attending meetings or performing duties as directed by the board. The committee was told by some that allowing regional education associations to pay their members a small stipend would be viewed as positive. Others indicated that many board members serve because they believe in the role and mission of the regional education association and that they have no expectation of compensation or reimbursement.

Employment of Executive Directors

Current law authorizes regional education associations to employ "staff" and, within this authority, all of the associations utilize the services of a "coordinator." The committee was told that the position often requires far more than the limited hours for which the coordinators were compensated. To address this situation, the bill draft would have provided that each regional education association employ a full-time executive director. The bill draft suggested that the qualifications of such an individual include at least a graduate degree, coupled with demonstrated competence in an administrative or managerial capacity, and at least a minimum of five years' experience in education, business, accounting, law, or some other profession. The bill draft also suggested that the level of compensation be in the range of $87,300 to $119,300. This would equate to the average total compensation range for administrators (assistant directors, assistant principals, principals, assistant superintendents, and superintendents) in the state's eight largest school districts.

The committee was told that the requirement for a full-time executive director should not be pursued at this time. Some suggested that the position had not yet evolved to the point of requiring a full-time employee. Others were not supportive of a statutorily established salary range. Most feared that the cost associated with the employment of full-time executive directors would come from the state appropriation for regional education associations, rather than from a supplemental state level appropriation.

Conclusion

The committee was told that the eight issues addressed in the bill draft were all legitimate points of discussion and that many of those issues reflect what regional education associations might look like in the future. However, given the grassroots initiatives that spawned regional education associations, coupled with the state's strong and continued belief in local control, legislators should give the regional education associations time and space to evolve. The regional education associations envision that by 2012, they will have an operational structure that will support each association and school district and be able to provide world-class, comprehensive education services for all students.

The committee was also told that the regional education associations were supportive of the $3 million appropriation being recommended by the North Dakota Commission on Education Improvement. The committee, therefore, makes no recommendation regarding the bill draft.

APPROPRIATENESS AND ADEQUACY OF HIGH SCHOOL CURRICULA STUDY

Background

In a 2005 survey released by the Educational Testing Service (ETS), only 9 percent of Americans said they believe that most high school students are being challenged by their schoolwork. After nearly two decades of reform efforts, most believe the key to success continues to reside in rigorous learning for all students and improved teacher quality. Americans believe in standards and accountability and they want reform efforts expanded to address pressing quality issues with our nation's high schools.

The ETS survey found that:

- Seventy-four percent of the public strongly favors measures to ensure teachers are experts in the subjects they teach;
- Eighty percent strongly or somewhat agree that teacher salaries should be increased to hire and retain more well-qualified teachers, even if doing so means increased taxes;
- Sixty-four percent strongly favor emphasizing real-world learning opportunities in high school through work study, community service, and vocational courses;
- Eighty percent favor requiring students to pass a statewide graduation test before they can receive a high school diploma; and
- All groups overwhelmingly favor a rigorous course of study that all students should have before graduation. This includes support for computer science (95 percent), four years of English (85 percent), three years of history and civics (81 percent), four years of mathematics (73 percent), at least three years of science (69 percent), and two years of a foreign language (63 percent).

Challenging North Dakota Students

North Dakota Century Code Section 15.1-21-02 contains a list of courses very similar to that supported by the ETS survey respondents:

- Four units of English language arts;
- Four units of mathematics;
- Four units of science;
- Four units of social studies, including one of world history and one of United States history;
- One-half unit of health;
- One-half unit of physical education;
- Two units of fine arts, at least one of which must be music;

- Two units of the same foreign language;
- Two units of career and technical education; and
- One-half unit of North Dakota studies.

However, the courses listed in NDCC Section 15.1-21-02 are those that a high school must make available in order to be approved. They are not the courses that students must take to graduate.

In 2007 the Legislative Assembly enacted the first statute providing a list of courses required for high school graduation. Beginning with the 2008-09 school year, a student may not graduate from a high school unless the student demonstrates successful completion of:

- Four units of English language arts;
- Two units of mathematics;
- Two units of science;
- Three units of social studies, which may include one-half unit of North Dakota studies and one-half unit of multicultural studies;
- One unit of physical education, which may include up to one-half unit of health; and
- One unit of a foreign or American Indian language, fine arts, or career and technical education.

For purposes of comparison, the North Dakota State University and University of North Dakota websites suggest the following courses for admission:

- Four units of English;
- Three units of mathematics (at the level of algebra I and above);
- Three units of laboratory science; and
- Three units of social science.

South Dakota's "Pathways to Graduation"

In 2004 the South Dakota Legislature enacted "Pathways to Graduation." Under this program, each student, beginning with the 2006 freshman class, must select either the distinguished path or the advanced path, unless the student's parent and a school counselor or administrator agree that the student should take only a basic high school program. The following table details the "Pathways to Graduation" program:

Distinguished	Advanced	Basic
Is designed to fulfill the minimum requirements for admission to most major colleges and universities	Is designed to fulfill the minimum requirements for admission to South Dakota's public universities and to most fields of study at technical institutes	Is designed to prepare students for entry-level jobs and some technical programs
4 units - English reading and communication arts • Writing (1.5 units) • Literature (1.5 units)	4 units - English reading and communication arts • Writing (1.5 units) • Literature (1.5 units)	4 units - English reading and communication arts • Writing (1.5 units) • Literature (1.5 units)
4 units - Mathematics • Algebra I (1 unit) • Algebra II (1 unit) • Geometry (1 unit) • Advanced mathematics elective (1 unit)	3 units - Mathematics • Algebra I (1 unit) • Algebra II (1 unit) • Geometry (1 unit)	3 units - Mathematics • Algebra I (1 unit) • Mathematics elective (2 units)
4 units - Science • Science electives (2 units) • Biology (1 unit) • Chemistry or physics (1 unit)	3 units - Science • Science elective (1 unit) • Biology (1 unit) • Chemistry or physics (1 unit)	2 units - Science • Science electives (2 units)
3 units - Social studies • United States history (1 unit) • United States government (.5 unit) • Geography (.5 unit) • World history (.5 unit)	3 units - Social studies • United States history (1 unit) • United States government (.5 unit) • Geography (.5 unit) • World history (.5 unit)	3 units - Social studies • United States history (1 unit) • United States government (.5 unit) • Geography (.5 unit) • World history (.5 unit)
1 unit - Fine arts	1 unit - Fine arts	1 unit - Fine arts
.5 unit - Health or physical education	.5 unit - Health or physical education	.5 unit - Health or physical education
.5 unit - Economics or personal finance	.5 unit - Economics or personal finance	.5 unit - Economics or personal finance
2 units - World language • Same world language	2 units • World language • Computer studies • Career and technical education	2 units • World language • Computer studies • Career and technical education

Indiana's Core 40

In 2007 the Core 40 became Indiana's required high school curriculum. While the Indiana General Assembly considered the Core 40 to be the academic foundation necessary for students to succeed in college and in the workforce, an opt-out provision could be exercised with parental consent after a meeting attended by the student, the student's parents, and school staff. Beginning in 2011, however, Indiana students must complete the Core 40 to enter a four-year public institution of higher education in the state. Private institutions in Indiana have expected this level of high school preparation for many years. The following table details the Indiana Core 40 tiered diploma system:

Core 40 With Academic Honors	Core 40 With Technical Honors	Core 40
4 units - English language arts	4 units - English language arts	4 units - English language arts, including a balance of literature, composition, and speech
3 units - Mathematics • Algebra I (1 unit) • Algebra II (1 unit) • Geometry (1 unit) Or complete Integrated Math series I, II, and III for 3 units. All students are required to take a math or physics course during their junior year or senior year. Plus: Core 40 math (1 additional unit)	3 units - Mathematics • Algebra I (1 unit) • Algebra II (1 unit) • Geometry (1 unit) Or complete Integrated Math series I, II, and III for 3 units. All students are required to take a math or physics course during their junior year or senior year.	3 units - Mathematics • Algebra I (1 unit) • Algebra II (1 unit) • Geometry (1 unit) Or complete Integrated Math series I, II, and III for 3 units. All students are required to take a math or physics course during their junior year or senior year.
3 units - Science • Biology I (1 unit) • Chemistry I or Physics I or Integrated Chemistry-Physics (1 unit) Any Core 40 science course (1 unit)	3 units - Science • Biology I (1 unit) • Chemistry I or Physics I or Integrated Chemistry-Physics (1 unit) Any Core 40 science course (1 unit)	3 units - Science • Biology I (1 unit) • Chemistry I or Physics I or Integrated Chemistry-Physics (1 unit) Any Core 40 science course (1 unit)
3 units - Social studies • United States history (1 unit) • United States government (.5 unit) • Economics (.5 unit) • World history and civilization or geography and history of the world (1 unit)	3 units - Social studies • United States history (1 unit) • United States government (.5 unit) • Economics (.5 unit) • World history and civilization or geography and history of the world (1 unit)	3 units - Social studies • United States history (1 unit) • United States government (.5 unit) • Economics (.5 unit) • World history and civilization or geography and history of the world (1 unit)
2.5 units - Directed electives • World languages • Fine arts • Career/technical Plus: Core 40 world languages (3 to 4 additional units) Plus: Core 40 fine arts (1 additional unit)	2.5 units - Directed electives • World languages • Fine arts • Career/technical	2.5 units - Directed electives • World languages • Fine arts • Career/technical
1 unit - Physical education	1 unit - Physical education	1 unit - Physical education
.5 unit - Health and wellness	.5 unit - Health and wellness	.5 unit - Health and wellness
3 units - Electives Career academic sequence recommended	3 units - Electives Career academic sequence recommended	3 units - Electives Career academic sequence recommended
Earn a grade of "C" or better in courses that will count toward the diploma	Earn a grade of "C" or better in courses that will count toward the diploma	
Have a grade point average of "B" or better	Have a grade point average of "B" or better	
Complete one of the following: • Advanced placement courses (2 units) and corresponding examinations • International baccalaureate (higher level) courses (2 units) and corresponding examinations • Score 1200 or higher on the Scholastic Aptitude Test (SAT) critical reading and mathematics • Score 26 or higher composite on the American College Test (ACT) • Complete dual high school/college credit courses from the Core Transfer Library (3 transferable college units) • Complete a combination of advanced placement courses (1 unit) and corresponding examinations and dual high school/college credit courses from the Core Transfer Library (1.5 transferable college units)	Complete a career/technical program (4 or more related units) Complete two of the following: • Score at or above the following levels on WorkKeys: Reading for Information - Level 6; Applied Mathematics - Level 6; Locating Information - Level 5; or complete dual high school/college credit courses in a technical area (3 transferable college units) • A professional career internship course or cooperative education course (1 unit) • An industry-based work experience as part of two-year technical education program (minimum 140 hours) • A state-approved, industry-recognized certification	
For comparison purposes, the credit requirements of the Indiana Core 40 have been converted to "units."		

Committee Consideration

As the committee began to examine issues pertaining to the adequacy of high school curricular requirements, it became apparent that its pursuit would involve much more than determining an appropriate number of credits for high school graduation. It would involve reviewing grade level requirements for particular courses and examining the type, timing, and nature of assessments that would be appropriate in determining whether students have in fact acquired the anticipated skill levels. It would involve discussions about helping students who need assistance and helping teachers be prepared to provide the requisite instruction. It would involve discussions about schools, school districts, and accessibility, and it would involve discussions about money. The committee determined that a discussion about the adequacy of North Dakota high school curricular requirements, if done properly, at the very least would parallel and probably duplicate many of the efforts being undertaken by the North Dakota Commission on Education Improvement. Because several of the committee members served on the commission and because the commission was required to provide periodic reports to the Legislative Council, the committee determined that this issue should not be the subject of a duplicative focus.

North Dakota Commission on Education Improvement

Williston Public School District No. 1 v. State of North Dakota

In October 2003 nine school districts brought suit against the state of North Dakota and alleged that the state's system of funding education was inadequate and that it unfairly and arbitrarily resulted in widely disparate funding, inequitable and inadequate educational opportunities, and unequal and inequitable tax burdens. Rather than endure a protracted trial on the merits, the plaintiffs and the defendants entered an agreement to stay the action and provide the Legislative Assembly with the opportunity to address the issues raised in the lawsuit.

The terms and conditions of the stay required that the Governor, by executive order, create the North Dakota Commission on Education Improvement and submit to the Legislative Assembly, in 2007, an executive budget that included at least $60 million more in funding for elementary and secondary education than the amount appropriated by the Legislative Assembly in 2005. In return, the plaintiffs agreed to stay the litigation until the close of the 2007 legislative session and at that time to dismiss the action, without prejudice, if the Legislative Assembly appropriated at least the requested amount and approved a resolution adopting the North Dakota Commission on Education Improvement as a vehicle for proposing improvements to the system of delivering and financing public elementary and secondary education. The plaintiffs also agreed that if the conditions were met, they would not commence another action based upon the same or similar allegations before conclusion of the 2009 legislative session.

Commission Membership

The North Dakota Commission on Education Improvement consists of the Governor or the Governor's designee, three school district superintendents, a school district business manager, the chairman of the Senate Education Committee or the chairman's designee, the chairman of the House Education Committee or the chairman's designee, the Senate minority leader or the minority leader's designee, one legislator appointed by the chairman of the Legislative Council, and the Superintendent of Public Instruction. The commission also has three nonvoting members--one representing the North Dakota Council of Educational Leaders, one representing the North Dakota Education Association, and one representing the North Dakota School Boards Association. The commission is chaired by the Lieutenant Governor in his capacity as the Governor's designee.

2007 Report of the Commission - 2007 Legislative Action

On January 3, 2007, the North Dakota Commission on Education Improvement presented its first report to the Governor and the Legislative Assembly. The recommendations in the report became the basis for Senate Bill No. 2200 (2007). By the conclusion of the 2007 legislative session, the state of North Dakota had a revolutionary new education funding formula and had increased spending for elementary and secondary education by more than $92 million over the amount appropriated in 2005.

The new formula consolidated education dollars that had been assigned to a variety of previously existing funding categories and established new weighting factors that reflected the added costs of providing education to certain categories of students and the added costs of providing various statutorily mandated services. In addition, the new formula factored in the variable cost of providing services and programs in small, medium, and large school districts.

To ensure a relatively consequence-free transition from the prior formula to the new formula, provisions were inserted to require a minimum percentage growth in the per student payment and to likewise cap a potential windfall in a district's per student payment.

The mill levy equalization factor, also known as the mill deduct, was repealed, as were supplemental payments. In their stead, the new formula required equity payments, which accounted for deficiencies in a district's imputed taxable valuation, and special provisions accommodating districts with abnormally low taxable valuations. The formula also included a reduction for districts that levied fewer than 150 mills during the first year of the biennium and fewer than 155 mills during the second year of the biennium.

Special education payments were increased from $37 million to $46 million and the state took on the full obligation of paying any amount over 4.5 percent of the average cost per student for the most costly 1 percent of special education students statewide.

Based on the commission's recommendations, the Legislative Assembly also increased the availability of

capital improvement loans for needy school districts, provided increased funding for new career and technical education centers and programs, and provided funding for full-day kindergarten programs.

Finally, the Legislative Assembly reauthorized the North Dakota Commission on Education Improvement and directed that it focus its attention on developing recommendations regarding educational adequacy.

Study of Educational Adequacy - Picus Report and Recommendations

After the 2007 legislative session, the commission contracted with Lawrence O. Picus and Associates (Picus), to identify the resources needed to ensure an adequate education for all students. Picus began with the premise that adequacy requires all students to be taught the state's curriculum and that strategies be deployed to use resources in ways that will double student performance on state tests over the coming four to six years. Picus determined very early in its efforts that, while North Dakota students perform reasonably well on state tests, only 30 to 40 percent of North Dakota students perform at or above the proficiency standard measured by the national assessment of educational progress. It was Picus' determination that North Dakota students would need to achieve at much higher levels if they were to be deemed fully prepared, upon high school graduation, for either college or the workplace.

Picus concluded that existing state per student payments, coupled with the yield of 185 mills on 88.5 percent of the state average imputed valuation per student, amounted to approximately $7,024 per student, whereas, in order to achieve adequacy, the cost per student would be $7,293.

Picus also insisted that expending a specific dollar amount per student would not achieve the desired results unless the expenditures were linked to certain programmatic strategies that guaranteed the desired results. Without such linkages the final effect would be nothing other than the existing education system at a much higher cost to taxpayers. Picus' recommendations, therefore, included the following:

- Class sizes for core courses (English language arts, mathematics, science, social studies, and foreign languages) should not exceed 15 students in kindergarten through grade 3 and should not exceed 25 students in the remaining grades.
- Specialists and elective teachers (art, music, physical education, health, etc.) should constitute at least 20 percent of the core instructional staff in kindergarten through grade 8 and at least 33 percent in the remaining grades.
- Instructional coaches for professional development should number at least one full-time equivalent (FTE) for every 200 students.
- Tutors to assist students who are struggling academically should number at least 1 FTE per prototypical school (kindergarten through grade 5 - 432 students; grades 6 through 8 - 450 students; and grades 9 through 12 - 600 students) plus 1 FTE for every 125 at-risk students.
- The weight applied to new English language learners should be increased to 1.0.
- Extended day programs should be funded.
- Each district should include $25 per student in average daily membership to cover the cost of increasing services to gifted and talented students.
- Substitute teachers should be funded by the state at the rate of 10 days per regular teacher.
- Guidance counselors should be provided at the rate of 1 for each prototypical elementary school and at the rate of 1 for every 250 students in prototypical middle schools and high schools. In addition, 1 FTE support position should be included for every 125 at-risk students. The support positions would be allocated according to a school's needs and could include social workers, nurses, psychologists, family outreach persons, and case workers, as well as additional guidance counselors.
- Two noninstructional aides should be included for each prototypical elementary school and middle school and three noninstructional aides should be included for each prototypical high school.
- One librarian should be included for each prototypical school.
- Administrative staff should include one principal for each elementary school, one principal and one half-time assistant principal for each prototypical middle school, and one principal and one assistant principal for each prototypical high school.
- Clerical staff should include two positions for each prototypical elementary school and middle school and four positions for each prototypical high school.
- Professional development days should be extended from the current 2 days to 10 days, and $100 per student should be included for the cost of training and related expenses.
- Technology funding should be included at the rate of $250 per student to cover the cost of computers, software, hardware, and supplies.
- Student activity funding should be included at the rate of $200 per elementary student and $250 per middle school and high school student.
- Central office personnel and service funding should be included at the rate of $600 per student.
- School and school district maintenance and operations funding should be included at the rate of $600 per student.

2009 Report of the Commission

The latest available report given to the committee by the commission indicated that the commission's definition of what constitutes an adequate education is not identical to that used by Picus. The commission believes that an adequate education refers to the successful completion of a rigorous core curriculum

established by state policy, being able to demonstrate proficiency on a state assessment aligned with the required curriculum, and being able to demonstrate proficiency, by scoring above the national average, on a widely recognized assessment such as the ACT, the SAT, or WorkKeys.

The committee was told that the commission appears to be supportive of the funding levels recommended by Picus and supportive of many, but not all, of the recommendations. Three of the recommendations, in particular, were found by the commission to be inappropriate, untested, or ineffective, given the circumstances surrounding the provision of elementary and secondary education in this state. Extended day programs were not supported largely because transportation and scheduling present significant challenges, particularly in the more rural areas of the state. Increased funding for gifted and talented students was not supported because wide disparity exists with respect to such programming and accountability measures tend not to exist. Finally, state funding to employ substitute teachers for up to 10 days per classroom teacher was rejected. The commission determined that, given existing teacher shortages, the state should not do anything to encourage increased absences among classroom teachers.

The committee was told that the commission also discussed professional development requirements, mentoring, instructional coaches, the number of contractual days per school calendar, requirements for career counselors, tiered diplomas, graduation requirements, early childhood education, data systems, property tax reductions, and certain changes to the education funding formula.

Conclusion

Because the commission had not officially recommended the report by the conclusion of the committee's study, the committee determined that it would be inappropriate to take any position on the report as a whole or on its component parts. The committee, therefore, makes no recommendation on the report.

OTHER REPORTS

The committee received statutorily required reports from the Superintendent of Public Instruction regarding the financial condition of school districts, school district employee compensation, the use of new money for teacher compensation, requests for waivers of accreditation rules, requests for waivers of instructional unit time requirements, scores from tests aligned to the state content standards in reading and mathematics, and the operations of regional education associations. Because of recent personnel changes, the Superintendent of Public Instruction was unable to provide the committee with a completed report regarding the planning and development of the electronic course delivery approval process. The Superintendent of Public Instruction indicated that the required approval process does not, however, become effective until July 1, 2009, and that a process would be in place by that time.

The committee received statutorily required reports from the Statewide Longitudinal Data System Committee regarding the statewide longitudinal data system and from the Education Standards and Practices Board regarding payments made to individuals who hold national board certification.

The committee suggests that, given the increasing number of reports, it would be acceptable to provide legislators with website locations for the reports rather than providing paper copies.

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) Retirement 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.

Pursuant to NDCC Section 54-06-31, the Legislative Council assigned the committee the responsibility to receive periodic reports from the Office of Management and Budget Human Resource Management Services on the implementation, progress, and bonuses provided under state agency recruitment and retention bonus programs. The Legislative Council chairman also directed the committee to study employee benefits provided by state agencies which are not specifically authorized by law or if authorized by law are not consistent among agencies.

Committee members were Representatives Bette Grande (Chairman), Eliot Glassheim, Jim Kasper, Matthew M. Klein, and Joe Kroeber and Senators Ralph L. Kilzer, Karen K. Krebsbach, Curtis Olafson, and Harvey D. Tallackson.

The committee submitted this report to the Legislative Council at the biennial meeting of the Council in November 2008. The Council accepted the report for submission to the 61st Legislative Assembly.

CONSIDERATION OF RETIREMENT AND HEALTH PLAN PROPOSALS

The committee established April 1, 2008, 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 PERS used the actuarial services of The Segal Company in evaluating proposals that affected retirement programs and the services of Gallagher Benefit Services, Inc., and Blue Cross Blue Shield of North Dakota in evaluating proposals that affected the public employees health insurance program. The Teachers' Fund for Retirement (TFFR) 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 61st Legislative Assembly.

Teachers' Fund for Retirement

Former NDCC Chapter 15-39 established the teachers' insurance and retirement fund. This fund, the rights to which were preserved by Section 15-39.1-03, provides a fixed annuity for full-time teachers whose rights vested in the fund before July 1, 1971. The plan was repealed in 1971 when the Teachers' Fund for Retirement was established with the enactment of

Chapter 15-39.1. The plan is managed by the TFFR Board of Trustees.

The Teachers' Fund for Retirement became effective July 1, 1971. The state investment board is responsible for the investment of the trust assets in accordance with the asset allocation policy established by the TFFR Board of Trustees. The Retirement and Investment Office is the administrative agency for TFFR. The Teachers' Fund for Retirement is a qualified governmental defined benefit retirement plan. For Governmental Accounting Standards Board (GASB) purposes, it is a cost-sharing, multiple-employer public employee retirement system.

Every certified teacher of a public school in the state participates in TFFR. This includes teachers, supervisors, principals, and administrators. Noncertified employees, such as teacher's aides, janitors, secretaries, and drivers are not allowed to participate in TFFR. Eligible employees become members on 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. Effective July 1, 2008, 0.5 percent of the member's salary was added to the employer contribution, making it 8.25 percent. However, the contribution will revert to 7.75 percent once the funded ratio reaches 90 percent, measured on the actuarial value of assets. Employees receive credit for service while members. A member also may purchase credit for certain periods, such as time spent teaching at a public school in another state, by paying the actuarially determined cost of the additional service. Special rules and limits govern the purchase of additional service.

Members who join TFFR by June 30, 2008, are Tier 1 members, while members who join after that date are Tier 2 members. If a Tier 1 member terminates, takes a refund, and later joins TFFR after June 30, 2008, that member is in Tier 2 after being reemployed. Final average compensation is the average of the member's highest three plan year salaries for Tier 1 members or five plan year salaries for Tier 2 members. Monthly benefits are based on one-twelfth of this amount.

Tier 1 members are eligible for a normal service retirement benefit at age 65 with credit for three years of service, or if earlier, when the sum of the member's age and years of service is at least 85--the Rule of 85. A Tier 2 member is eligible for a normal service retirement benefit at age 65 with credit of five years of service, or if earlier, when the sum of the member's age and years of service is at least 90--the Rule of 90. The monthly retirement benefit is 2.00 percent of final average compensation (monthly) times years of service. Benefits are paid as a monthly life annuity, with a guarantee that if the payments made do not exceed the members' contributions plus interest, determined as of the date of retirement, the balance will be paid in a lump sum to the member's beneficiary.

A Tier 1 member may retire early after reaching age 55 with credit for three years of service, while a Tier 2 member may retire early after reaching age 55 with credit for five 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 for Tier 1 members or 90 for Tier 2 members.

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 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 contributions 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 (except for a nonlevel annuity designed to provide a level total income when combined with the member's Social Security benefit) and a partial lump sum option also are permitted in the case of disability retirement. Disability benefits are converted to a normal retirement benefit when the member reaches normal retirement age or age 65, whichever is earlier. A Tier 1 member with at least three years of service or a Tier 2 member with at least five years of service, who does not withdraw the member's 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. The 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 sum of the member's age and service is 85 for Tier 1 members or 90 for Tier 2 members. 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 who dies after leaving active service but before retiring is entitled to receive a death benefit.

A Tier 1 member leaving covered employment with fewer than three years of service and a Tier 1 member leaving covered employment with fewer than five years of service are eligible to withdraw or receive a refund benefit. Optionally, a vested member may withdraw the member's contributions plus interest in lieu of the deferred benefit otherwise due. A member who withdraws receives a lump sum payment of the member's employee contributions plus interest credited on these contributions. Interest is credited at 6 percent per year.

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 contributions 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, "popping-up" to the original life annuity 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 before 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 before 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 before receiving 120 payments, the payments will be continued to the 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 before receiving 60 payments, the payments 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 that date are unaffected. 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 equivalence is based on tables adopted by the board of trustees.

From time to time, TFFR statutes have been amended to grant certain postretirement benefit increases. However, TFFR has no automatic cost-of-living increase features.

Since 1991 there have been several plan changes in TFFR. 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 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 also was 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 percent to 7.75 percent, and a $30 per month benefit improvement was granted to all retirees and beneficiaries.

In 1999 the vesting requirement was reduced from five years of service to three years of service. The early retirement reduction factor was changed to 6 percent per year from the earlier of age 65 or the date as of which age plus service equals 85 rather than from 65 in all cases. An ad hoc cost-of-living adjustment was provided for all retirees and beneficiaries. This increase was equal to an additional $2 per month for each year of service plus $1 per month for each year since the member's retirement. Finally, the benefit multiplier was increased from 1.75 percent to 1.88 percent.

In 2001 an ad hoc cost-of-living adjustment was provided for all retirees and beneficiaries. The ad hoc cost-of-living adjustment increase was equal to an additional $2 per month for each year of service plus $1 per month for each year since the member's retirement. Retirees and beneficiaries were also eligible to receive the two conditional annual benefit adjustments equal to .75 percent times the monthly benefit, payable July 1, 2001, and July 1, 2002. 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 PERS in fiscal year 2004. Both assets and liabilities for all TFFR system service was transferred for electing employees. Transferred assets were based on the actuarial present value of the member's accrued TFFR benefit or the member's contribution account balance if larger.

In 2007 the Legislative Assembly established a Tier 2 membership for active members hired after June 30, 2008. Tier 2 members are eligible for an unreduced retirement benefit when they reach age 65 with at least five years of service, rather than three years of service for Tier 1 members, or if earlier, when the sum of the member's age and service is at least 90, rather than 85 for Tier 1 members. Tier 2 members are eligible for a reduced early retirement benefit when they reach age 55 with five years of service, rather than three years of service for Tier 1 members. Tier 2 members are fully vested after five years of service rather than three years of service for Tier 1 members. Final average compensation for Tier 2 members is the average of the member's highest five plan year salaries, rather than the average of the three highest salaries for Tier 1 members. The employer contribution rate was increased from 7.75 percent to 8.25 percent effective July 1, 2008. The employer contribution rate will be reset to 7.75 percent once the fund reaches a 90 percent funded ratio, measured using the actuarial value of assets. If the funded ratio rate falls below 90 percent, the contribution rate will not automatically return to 8.25 percent. Employer contributions were required on the salary of reemployed retirees. Active members of the Department of Career and Technical Education were permitted to make a one-time irrevocable election to transfer to the Public Employees Retirement System in fiscal year 2008. Both assets and liabilities for all TFFR service were transferred for electing employees. Transferred assets were the actuarial present value of the member's accrued TFFR benefit, or the member's contribution account balance if larger.

The latest available report of the consulting actuary was dated July 1, 2008. 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 TFFR, and to analyze changes in TFFR's condition. In addition, the actuarial report provides information required by TFFR in connection with GASB 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 TFFR's plan and fiscal year. The contribution rates are intended to be sufficient to pay TFFR's normal cost and to amortize the fund's unfunded actuarial accrued liability over a period of 30 years from the valuation date. A 30-year period is the maximum amortization period allowed by GASB No. 25 in computing the annual required contribution. The 30-year period is in common use for public sector plans and is considered reasonable by the actuary.

In order to determine the adequacy of the 8.25 percent statutory employer contribution rate, it is compared to the GASB No. 25 annual required contribution. The annual required contribution is equal to the sum of the employer normal cost rate and the level percentage of pay required to amortize the unfunded actuarial accrued liability over a 30-year period. For this calculation, payroll is assumed to increase 2.00 percent per annum. As of July 1, 2008, the annual required contribution is 9.24 percent, decreased from 10.15 percent on July 1, 2007. This is greater than the 8.25 percent rate required by law. The shortfall, the negative margin, between the rate mandated by law and the rate necessary to fund the unfunded actuarial accrued liability in 30 years is -0.99 percent.

The plan had a net asset loss of $63 million from previous years which has not yet been recognized in the actuarial value of assets because of the five-year smoothing mechanism. This unrecognized asset loss is due to a large market loss in fiscal year 2008.

The funded ratio, the ratio of the actuarial value of assets to the actuarial accrued liability, increased from last year. The funded ratio on July 1, 2008, was 81.9 percent, while it was 79.2 percent as of July 1, 2007. Based on market value rather than actuarial values of assets, the funded ratio decreased to 79.2 percent from 91.9 percent on July 1, 2007.

The Teachers' Fund For Retirement is required to report in its Comprehensive Annual Financial Report for the current fiscal year ending June 30, 2008, that actual contributions received in fiscal year 2008 were less than the annual required contribution. The fiscal year 2008 7.75 percent statutory rate was 76.4 percent of the 10.15 percent annual required contribution determined by the last valuation. Next year, the Comprehensive Annual Financial Report for fiscal year 2009 will show the 8.25 percent statutory rate is only 89.3 percent of the 9.24 percent annual required contribution. Because TFFR is a cost-sharing, multiple-employer retirement system, there are no other accounting consequences for the state or the other school districts that sponsor TFFR.

In addition to increasing the employer contribution rate, the Legislative Assembly in 2007 created a new tier of benefits for members hired on or after July 1, 2008. These future hires are called Tier 2 members. In fiscal year 2008, 16 employees of the Department of Career and Technical Education transferred to the Public Employees Retirement System. In conjunction with this transfer, $3.2 million in assets was transferred to the Public Employees Retirement System at the same time. This transfer did not materially affect TFFR.

Actuarial assumptions and methods are set by the board of trustees based upon recommendations made by the plan's actuary. These assumptions and procedures were last changed in 2005 following an analysis of plan experience for the five-year period ending June 30, 2004. The board adopted the assumptions and methods recommended by the actuary. The actuarial consultant reported that it believes the

assumptions are internally consistent and are reasonable based on the actual experience of TFFR. These actuarial assumptions and methods comply with the parameters for disclosure in GASB No. 25.

The fund had 17,566 members on July 1, 2008. Of this total, 9,561 were active members, 6,317 were retirees and beneficiaries, 1,459 were inactive vested members, and 229 were inactive nonvested members. The total payroll was $417.7 million. The average salary was $43,684, the average age was 44.6 years, and average service was 14.4 years.

The assets at market value were $1,846.1 million with an actuarial value of $1,909.5 million. The return on the market value of assets was -7.0 percent for the period ending June 30, 2008. This compares to 20.4 percent for the period ending June 30, 2007. The return on the actuarial value of assets was 11.6 percent for the period ending June 30, 2008. This compares to 14.4 percent for the period ending June 30, 2007. The ratio of actuarial value to market value was 103.4 percent and external cashflow was -2.3 percent. The consulting actuary reported that the normal cost percentage is 10.26 percent, the unfunded actuarial accrued liability decreased from $459.2 million to $421.2 million and the funded ratio, actuarial assets divided by actuarial accrued liability, increased from 79.2 percent to 81.9 percent. The funding period decreased from infinite to 57 years. The benchmark contribution requirement is 9.24 percent and thus the available margin is -.99 percent (8.25 percent - 9.24 percent = -.99 percent). The available margin on July 1, 2007, was -2.40 percent.

The following is a summary of the proposals affecting TFFR over which the committee took jurisdiction and the committee's action on the proposals:

Bill No. 100

Sponsor: Board of Trustees

Proposal: Provides for technical and administrative changes to the TFFR program relating to incorporation of federal law changes, procedure relating to benefit limitations, annual hour limit for retiree reemployment, and disclosure of confidential records.

Actuarial Analysis: The consulting actuary reported that the bill has no cost effect. The bill does not increase the plan's liabilities; does not change the plan's funded status, funding, or contribution margins; and does not have any material administrative implications.

Committee Report: Favorable recommendation.

Bill No. 109

Sponsor: Senator David O'Connell

Proposal: Provides for a special one-time payment for annuitants for TFFR. Under the bill each annuitant, retiree, disabled retiree, or beneficiary receiving a benefit as of June 30, 2009, would receive a one-time payment equal to the sum of $48 times the member's years of service and $36 times the number of years the member has been retired. The payment would be made in December 2009. The bill also contains an appropriation of $11 million from the general fund to TFFR to fund this special benefit.

The committee amended the bill at the request of the sponsor to provide that each annuitant--retiree, disabled retiree, or beneficiary receiving a benefit--who retired before January 1, 2009, and who is still receiving benefits as of December 1, 2009, would receive a special one-time payment equal to the sum of $24 times the member's years of service and $18 times the number of years the member has been retired. The payment would be limited to no more than the larger of 10 percent of the member's annual retirement benefit or $750. The payment would be made in December 2009. The revised bill also provides for a second payment, determined under the same formula with the same maximum to be made in December 2010 to the member's who retired before January 1, 2009, and who are still receiving payments as of December 1, 2010. The bill provides for a transfer from the general fund for up to $11 million to TFFR, intended to pay for these two special payments.

Actuarial Analysis: The consulting actuary reported that the payments should be no more than approximately $10.9 million for the two years combined making the $11 million appropriation sufficient. Therefore, there would be no effect on the unfunded actuarial accrued liability of TFFR and no effect on the funded ratio or margin since the special payments would be covered by the appropriation.

Committee Report: No recommendation.

Public Employees Retirement System

The Public Employees Retirement System is governed by NDCC Chapter 54-52 and includes the PERS 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 attaining 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 contributions 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.

Terminated vested members who choose a refund and terminated nonvested members are entitled to a refund of member contributions. 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 for members of the main, National Guard, and law enforcement systems is a monthly benefit for life with a refund to the beneficiary at death of the remaining balance, if any, of accumulated member contributions. The standard form of payment for members of the judges' retirement system is a monthly benefit for life, with 50 percent payable to an eligible survivor. Optional forms of payment are life annuity for judges, a 50 percent joint and survivor annuity for members of the main, National Guard, and law enforcement systems; a 100 percent joint and survivor annuity with "pop-up" feature; a 5-year certain and life annuity; a 10-year certain and life annuity; or a level Social Security income annuity. The final average salary is the average of the highest salary received by a

member for any 36 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 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 PERS 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 PERS was reduced from 5.12 percent 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 percent to 16.07 percent or 1 percent of the monthly salaries or wages of participating members, including participating Supreme Court and district court judges, and the money was redirected to the retiree health insurance credit fund.

The latest available report of the consulting actuary is dated July 1, 2008. According to that report, the combined net assets of PERS and the Highway Patrolmen's retirement system were $1,816,810,807 at market value. This compares to $1,939,134,759 on July 1, 2007. This year's combined market value represents a decrease of 6.31 percent over the market value one year earlier. The rate of return on the market value basis for the PERS fund was -5.21 percent for the year ended June 30, 2008. The actuarial value of assets is determined by spreading market appreciation and depreciation over five years beginning with the years 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 PERS and the Highway Patrolmen's retirement system income funds to determine the combined actuarial value of the systems. The combined actuarial value was $1,660,619,226 as of June 30, 2008. There is approximately $156 million of appreciation that will be recognized in future years. For the 10-year period ending June 30, 2008, the combined investment results yielded earnings of $953,822,100 on an actuarial value basis representing an average annual return of 8.25 percent. For the 2007-08 year, the actuarial rate of return on the combined value of assets was 8.51 percent. The actuarial consultant reported that assets have increased consistently from year to year, although the amount of the increase has varied with fluctuations in investment income. Benefit payments have also increased consistently over the period, with the exception of one year. Benefit payments and expenses continue to exceed contributions. However, over the past 10 years, investment income has offset this deficit and served to increase the assets of the system.

The Public Employees Retirement System had 19,296 active members on July 1, 2008. Of this total, 19,042 were active members of the main system, 47 were active members of the judges' retirement system, 31 were active members of the National Guard retirement system, 136 were active members of the law enforcement retirement system with prior main service, and 30 were active members of the law enforcement without prior main service system. The total payroll was $640,684,587 and average salary was $33,203. There were 2,154 inactive members as of July 1, 2008, with vested rights to deferred retirement benefits. The average deferred monthly benefit for this group was $361. There were also 25 members from the main system and 5 members from the National Guard on leave of absence. For these groups, a liability is carried for their deferred retirement benefits. There were 1,995 inactive members that are due refunds.

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 with increasing payments. The statutory contribution rate is 4.12 percent of payroll. The actuarial consultant determined the total employer contribution requirement for the main system is 6.26 percent. Thus, statutory contributions are less than the actuarial contribution

requirement by 2.14 percent of payroll. The statutory contribution rate for the judges' retirement system is 14.52 percent of payroll. The actuarial consultant determined the total employer contribution requirement is 8.99 percent. Thus, statutory contributions exceed the actuarial contribution requirement by 5.53 percent of payroll. The contribution rate set by the Retirement Board for the National Guard retirement system is 6.50 percent of payroll. The actuarial consultant determined the total employer contribution requirement is 3.44 percent. Thus, contributions exceed the actuarial contribution requirement by 3.06 percent of payroll. The contribution rate set by the Retirement Board for the law enforcement with prior main service plan is 8.31 percent of payroll. The actuarial consultant determined the total employer contribution requirement is 9.04 percent. Thus, contributions are less than the actuarial contribution requirement by .73 percent of payroll. The contribution rate set by the Retirement Board for the law enforcement without prior main service system is 6.43 percent of payroll. The actuarial consultant determined the total employer contribution requirement is 7.15 percent. Thus, contributions are less than the actuarial contribution requirement by .72 percent of payroll.

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 eligible employment. The preretirement death benefit is available as a lump sum payment of accumulated contributions with interest; monthly payment of the member's accrued benefit for 60 months for the surviving spouse; 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 fewer than 10 years of service or if there is no surviving spouse, then a death benefit is a lump sum payment of the member's accumulated contributions with interest.

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 100 percent joint and survivor annuity, 10-year certain and life annuity, and a 20-year certain and life annuity. A partial lump sum payment in addition to one of the annuity options is available. Final average salary is the average of the highest salary received by the member for any 36 months employed during the last 120 months of employment. Members contribute 10.30 percent of monthly salary and the state contributes 16.70 percent of the monthly salary for each participating member. A member's contributions earn interest at an annual rate of 7.50 percent compounded monthly.

The latest available report of the consulting actuary for the Highway Patrolmen's retirement fund is dated July 1, 2008. According to that report, the Highway Patrolmen's retirement fund had net assets with an actuarial value of $55,587,776. This compares to $60,209,892 as of July 1, 2007. The rate of return on the market value basis for the Highway Patrolmen's retirement system fund was -5.22 percent for the year ended June 30, 2008. The actuarial value of assets for the Highway Patrolmen's retirement system as of July 1, 2008, was $50,808,884. The actuarial value of assets was $48,167,914 on July 1, 2007. Thus, on an actuarial basis, the rate of return for the Highway Patrolmen's retirement system fund was 8.78 percent for the year ended June 30, 2008. Total active membership was 130, and an employer contribution of 15.76 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 .94 percent of payroll.

The latest available report of the consulting actuary for the retiree health insurance credit fund is dated July 1, 2008. According to that report, the fund had net assets with a market value of $40,423,019 and an actuarial value of $42,543,140. The rate of return on the market value basis was -14.04 percent for the year ending June 30, 2008. On an actuarial basis, the rate of return was 5.16 percent for that year. Total active membership was 19,659--7,750 males and 11,909 females. The statutory contribution rate is 1.00 percent of payroll. An employer contribution of .88 percent of payroll is required to fund the plan. This results in an actuarial margin of .12 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 PERS 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, 2008, the plan had 38 fully vested active

employees with total annual salaries of $1,762,644. There were 4 inactive employees as of July 1, 2008, with vested rights. There were 118 pensioners and beneficiaries as of July 1, 2008, and 98 pensioners and beneficiaries receiving annuities from the Travelers Plan as of July 1, 2008. Thus, there were 258 plan participants as of July 1, 2008. The scheduled contribution at the end of the year ending June 30, 2008, was zero, and thus the normal cost was zero. The July 1, 2008, actuarial valuation reported the actuarial value of assets at $77,020,934 and the actuarial present value of projected benefits at $71,828,872. The total market value of assets was $89,913,883. Effective July 1, 1999, the scheduled contribution is 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 following is a summary of the proposals affecting PERS over which the committee took jurisdiction and the committee's action on each proposal:

Bill No. 111

Sponsor: PERS Retirement Board

Proposal: Allows the PERS Retirement Board to appoint as one if its three members on the North Dakota State Investment Board a nonelected board member, such as the board chairman, who is appointed by the Governor, the Attorney General's appointee, or the State Health Officer's designee. Under current law the PERS Retirement Board is authorized to appoint three of its four elected members to the North Dakota State Investment Board. The bill authorizes payment of employee contributions on a pretax basis, instead of on an aftertax basis, for the Highway Patrolmen's retirement system and the judges' retirement system via employer pickup under Internal Revenue Code rules for compensation earned after August 1, 2009. The bill allows members of the hybrid plan and the Highway Patrolmen's retirement system to select a nonspouse beneficiary as a joint annuitant for the joint and survivor benefit option. The actuarial consultant refers to the main system as a hybrid plan because it incorporates some features of a defined contribution plan. The bill allows members of the hybrid plan and the Highway Patrolmen's retirement system to designate a subsequent beneficiary, either after the death of the original beneficiary or upon divorce of the member, for retirees who elected a joint and survivor benefit option. The bill allows members of the hybrid plan and the Highway Patrolmen's retirement system to elect a new monthly benefit that provides a graduated increase of 1 percent or 2 percent. A monthly retirement benefit would be actuarially adjusted to provide for the postretirement increases. The bill eliminates the 60-month option as a form of payment for surviving spouses in the hybrid plan. The bill allows members of the hybrid plan and the Highway Patrolmen's retirement system to purchase up to 10 years of service credit instead of 5 years, unrelated to other eligible service. A maximum of 5 years of service credit purchased under this provision would count toward retirement eligibility for the Rule of 80 for the Highway Patrolmen's retirement system or the Rule of 85 under the hybrid plan. The bill updates federal compliance provisions of the hybrid plan and the Highway Patrolmen's retirement system, including additional language to comply with Internal Revenue Code Section 415(d) and related regulations. Under present law, members of the PERS plan may run for election to the PERS Retirement Board. The bill broadens the election to include members of the Highway Patrolmen's retirement system, Job Service North Dakota retirement plan, and the defined contribution plan, which are also administered by the board.

The committee amended the bill at the request of the PERS Retirement Board to eliminate the provision allowing members in the Highway Patrolmen's retirement system and PERS to purchase an additional five years of service credit in addition to the five years presently authorized, except the purchase would not apply toward eligibility for the Rule of 85, the provision allowing a member to designate someone other than the spouse as the beneficiary with the consent of the spouse, and the provision allowing a member to choose a new joint and survivor beneficiary if the existing beneficiary passes away.

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 had an actuarial impact on the hybrid plan and the Highway Patrolmen's retirement system. Because the normal form of retirement for the Highway Patrolmen's retirement system and the judges' retirement system is a 50 percent joint and survivor annuity, and the bill allowed nonmarried members to receive an unreduced joint and survivor benefit, the cost of this change to the Highway Patrolmen's retirement system was .29 percent of covered compensation. The cost of this change for the judges' retirement system was .54 percent of covered compensation.

Committee Report: Favorable recommendation.

Bill No. 112

Sponsor: PERS Retirement Board

Proposal: Allows the PERS Retirement Board to provide for a one-time postretirement payment equal to 50 percent, 75 percent, or 100 percent of the member's or beneficiary's current monthly payment amount in January 2010 if the trust fund's total annual return on investment is greater than 8 percent, 9 percent, or 10 percent, respectively, and the funding ratio based on the market value of assets is greater than 105 percent, 110 percent, or 115 percent, respectively, for the fiscal year ending June 2009. If none of these financial thresholds are met, no additional payment will be made. This would be a potential one-time payment in the biennium, applicable to both the hybrid plan and the Highway Patrolmen's retirement system. The bill also allows the PERS Retirement Board to provide for a postretirement increase of 2 percent of monthly benefits for members and their beneficiaries in both the hybrid plan, except the judges' retirement system, and the

Highway Patrolmen's retirement system, beginning in January 2011. The bill also increases the employer contribution rate from 16.70 percent to 22.60 percent of salary for the Highway Patrolmen's retirement system and from 4.12 percent to 5.44 percent of salary for the hybrid plan and the defined contribution plan from July 1, 2009, through June 30, 2011. The employer contribution rate increase and 2 percent monthly postretirement benefit increase are optional for political subdivision employers in the hybrid plan who must elect to participate in the benefit before July 1, 2009, or be presumed not to participate. The bill also allows the PERS Retirement Board to provide for an increase of 2 percent of monthly retirement benefits for Supreme Court and district court judges who are retirees and their beneficiaries beginning January 1, 2011, if the board determines there is a sufficient actuarial margin to pay the increase. The bill changes the normal form of benefits for the Highway Patrolmen's retirement system from a 50 percent joint and survivor benefit to a 100 percent joint and survivor benefit for surviving spouses. The bill allows participants in the deferred compensation plan who have vested employer contributions in the hybrid plan to purchase up to three years of service credit by paying only the employer plus employee contribution rate, 9.12 percent of salary for each month purchased, rather than the full actuarial cost of the service. The purchased service credit will not count toward retirement date eligibility.

The committee amended the bill at the request of the sponsor to reflect the appropriate required employer contribution, remove the change of the normal form of benefit for the Highway Patrolmen's retirement system from a 50 percent joint and survivor benefit to a 100 percent joint and survivor benefit for surviving spouses, more clearly define who is eligible for the 2 percent increase for PERS and the Highway Patrolmen's retirement system retirees in January of 2011, delete the incentive provision for PERS members to engage in supplemental retirement savings in the 457 deferred compensation plan, provide a late election opportunity for political subdivisions, clarify that employer elections are made for each plan in which the employer participates, and provide an appropriation to fund the benefit increases contained in the bill.

Actuarial Analysis: The proposal, as amended, has no actuarial cost impact as the appropriation is sufficient to fund the enhanced benefit. The consulting actuary reported the bill, as submitted, would have had an actuarial impact on the hybrid plan and the Highway Patrolmen's retirement system. The provision allowing for a one-time postretirement payment equal to 50 percent, 75 percent, or 100 percent of the member's or beneficiary's current monthly benefit payment amount would increase the plan's unfunded liability if the necessary conditions are met. For example, if the return on investment is at least 10 percent and the market value ratio is at least 115 percent for the fiscal year ending June 2009, then the unfunded liability is expected to increase by $7.4 million. Although this additional liability will be fully offset to some degree by the necessary investment gain, the plan surplus will still be $7.4 million lower than it would have been if this provision were not adopted. The surplus that is required for the 13th check to be paid will ensure the plans still have a surplus on a market value basis even after the check is paid. The 100 percent joint and survivor benefit as the normal form for the Highway Patrolmen's retirement system would increase the actuarially determined contribution rate by 3.02 percent of payroll.

The extent to which the purchase of service incentive for participants in the deferred compensation program has a cost impact depends upon the size of the affected groups, the demographic makeup, and utilization rate of the incentive. The consulting actuary reported that if participation were to increase to 50 percent, and if everyone eligible to purchase service were to purchase one year on average, then the actuarially determined contribution rate for the main retirement plan would increase by about .30 percent of payroll.

The estimated actuarial cost of a one-time, 2 percent benefit increase for retirees and beneficiaries in pay status as of January 1, 2011, for members of the hybrid plan, except the judges' retirement plan, and Highway Patrolmen's retirement system is 1.30 percent for the main system, .49 percent for the National Guard system, .80 percent for the law enforcement with prior main service system, .03 percent for the law enforcement without prior main service system, and 5.34 percent for the Highway Patrolmen's retirement system.

The actuarial consultant reported that a 2 percent monthly benefit increase for retired judges will increase the plan actuarial accrued liability by approximately $33,000 and will increase the actuarially determined contribution rate by .41 percent of active payroll.

Committee Report: No recommendation.

Bill No. 118

Sponsor: Senator Stanley W. Lyson

Proposal: Establishes a supplemental defined contribution retirement plan for state correctional and peace officers. Under the plan an eligible employee who elects to participate in the optional plan would be required to contribute 2 percent of the eligible employee's monthly salary and the employer would contribute 3 percent of the eligible member's monthly salary to a defined contribution account. The employer contribution would cease the first day of the month next following the month in which the participating member attains the age of 60 or when the participating member has a combined total of years of service credit and years of age equal to 85. A participating member who continues to be employed as an eligible employee on the first day of the month in which the participating member attains the age of 60 or when the participating member has a combined total of years of service credit and years of age equal to 85 forfeits all employer contributions made to the participating member's account under the program.

Actuarial Analysis: The consulting actuary noted the Age Discrimination in Employment Act generally prohibits cessation of contributions to an employee's account in a defined contribution plan or other discrimination in benefits because the employee has

attained a certain age. One exception to this general rule of law is where a governmental employer imposes a mandatory retirement age for public safety officers under a bona fide retirement plan. The consulting actuary was unsure whether the eligible employees under the new plan are subject to a mandatory retirement age rule from their employers. The consulting actuary noted the bill does not require the employer contributions be forfeited until after the bill stipulates they are 100 percent vested, after which point contributions cannot, by definition, be forfeited. The consulting actuary noted that because the provisions for payment in the proposed plan do not match the provisions for payment in the current plan, participants are not always able to receive benefits from both plans. In fact, in some cases, the participant must make a decision between receiving benefits from a defined contribution plan or a reduced benefit from the defined benefit plan.

The PERS Retirement Board noted no appropriation is contained in the bill and recommended that an appropriation be included to fund the required employer contributions.

Committee Report: No recommendation.

Bill No. 206

Sponsor: Representative Lawrence R. Klemin

Proposal: Allows the PERS Retirement Board to establish a trust health care savings plan for all Supreme Court and district court judges participating in PERS.

Actuarial Analysis: The costs of the proposal should be nominal and the proposal appears to meet Internal Revenue service requirements.

Committee Report: Favorable recommendation.

Uniform Group Insurance Program

Bill No. 113

Sponsor: PERS Retirement Board

Proposal: Changes the rate for a non-Medicare retiree single plan under the uniform group insurance program from 150 percent of the active member single plan rate to 125 percent of the active member single plan rate. The proposal expires June 30, 2011. The committee amended the proposal at the request of the sponsor to change the ratio from 125 percent to 130 percent.

Actuarial Analysis: The consulting actuary identified two impacts to the uniform group insurance program. First, the plan will need an increased subsidy to support the reduced rate, and second, the cost of the increased subsidy will increase the other postemployment benefits (OPEB) liability of the plan through the state. The actuarial consultant noted the expiration date will not affect the cost of the plan for the 2009-11 biennium; however, it could reduce the reported OPEB liability if this is done only one time.

Committee Report: Favorable recommendation.

Bill No. 114

Sponsor: PERS Retirement Board

Proposal: Increases the required monthly contribution to the retiree health benefits fund from 1.00 percent of monthly salary to 1.15 percent of monthly salary and increases the monthly retiree health credit from $4.50 per year of credited services to $5 per year of credited service. The committee amended the proposal at the request of the sponsor to reduce the required monthly contribution from 1.15 percent to 1.14 percent.

Actuarial Analysis: The consulting actuary calculated the additional contribution of .14 percent of salary will be sufficient to offset the cost of the additional monthly benefit of 50 cents per year of credited service.

Committee Report: Favorable recommendation.

Bill No. 33

Sponsor: Senator Tim Mathern

Proposal: Establishes the Healthy North Dakota health insurance plan. The proposal adds a new subgroup under the uniform group insurance plan for Healthy North Dakota insurance coverage; establishes a Healthy North Dakota authority board and executive director; offers coverage to every eligible individual in North Dakota under the age of 65 with some very limited exceptions; establishes a funding mechanism for employers, employees, and the self-employed, and other eligible individuals; establishes a standard Healthy North Dakota health benefit plan design, including prescription drugs, for all covered plan participants; establishes mandated individual health care provider network selection and reimbursement methodologies; and establishes an office of outreach, enrollment, and advocacy under the authority.

Actuarial Analysis: The consulting actuary determined the proposal will create a number of financial and administrative challenges for the PERS Retirement Board. The most critical financial issue would be the impact on PERS from the requirement that state and local governments participate in the funding of the Healthy North Dakota program. The Tax Department also identified several significant tax and compliance issues with the proposal in addition to a tight timeframe contained in the proposal.

Committee Report: Unfavorable recommendation.

Bill No. 84

Sponsor: Senator David O'Connell

Proposal: Establishes parity for health insurance coverage of prosthetics. The committee amended the proposal at the request of the sponsor to include a $190,090 appropriation to defray the cost of additional health insurance premiums necessary to provide the coverage under the proposal.

Actuarial Analysis: Blue Cross Blue Shield of North Dakota estimated that the cost is 90 cents per contract per month for the 2009-11 biennium.

Committee Report: No recommendation.

Bill No. 124

Sponsor: Representative Louise Potter

Proposal: Requires PERS insurance policies include colorectal cancer screening examinations and laboratory tests of asymptomatic individuals in accordance with guidelines established by the American Cancer Society or the American College of

Gastroenterology. The committee amended the proposal at the request of the sponsor to include an appropriation of $853,277 to defray the cost of additional health insurance premiums necessary to provide the coverage.

Actuarial Analysis: Blue Cross Blue Shield of North Dakota estimated the proposal would cost an additional $4.04 per contract per month for the 2009-11 biennium.

Committee Report: Unfavorable recommendation.

Bill No. 125

Sponsor: Senator Tim Mathern

Proposal: Expands the uniform group insurance program to allow participation by permanent and temporary employees of private sector employers and other individuals as well as allowing agents to sell the group insurance program and receive commissions.

Actuarial Analysis: The actuarial consultant reported that as long as PERS is allowed to separate private sector groups, temporary employees, and individual plan participants into their distinct rating subgroups, there should be no direct financial impact to the existing program.

Committee Report: Unfavorable recommendation.

Firefighters Relief Association Plans

Bill No. 144

Sponsor: Representative Bette Grande

Proposal: Incorporates changes by the Fargo Firefighters Relief Association into NDCC Chapter 18-11 relating to alternate firefighters relief association plan benefits.

Actuarial Analysis: The consulting actuary for the Fargo Firefighters Relief Association reported the benefit enhancements included in the proposal are actuarially sound.

Committee Report: Favorable recommendation.

ADDITIONAL COMMITTEE RESPONSIBILITIES

The PERS Retirement Board reported that no action by the committee was required under NDCC Section 54-52.1-08.2 to approve terminology adopted by the board to comply with the 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.

Pursuant to NDCC Section 54-06-31, the committee received periodic reports from 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 following schedule is a summary of the information presented:

	July 1, 2007, to October 31, 2008			
	Recruitment		Retention	
Agency	Number	Amount	Number	Amount
Information Technology Department	24	$35,750		
State Auditor			2	$4,500
Commission on Legal Counsel for Indigents	2	3,400		
Veterans Home				
Department of Human Services	293	134,701	8	77,652
Job Service North Dakota				
Department of Mineral Resources	2	4,800	101	116,150
Bank of North Dakota	2	5,000	13	64,702
Highway Patrol	1	500		
Department of Corrections and Rehabilitation	13	3,425		
Department of Transportation	67	191,687		
Totals	404	$379,263	195	$419,471

EMPLOYEE BENEFITS STUDY

Survey of State Agencies

The Legislative Council chairman directed the committee to study employee benefits provided by state agencies which are not specifically authorized by law or if authorized by law are not consistent among agencies. The committee conducted a benefits survey of state agencies. The survey asked whether agencies pay for employee service awards or employee recognition, reward, or incentive programs; whether agencies provide employer-paid tuition for higher education coursework for employees; whether agencies pay employee membership dues for professional organizations or service clubs, excluding membership dues for which an employee is required to be a member for the position the employee is filling, membership dues incidental to publications, and membership dues incidental to continuing education credits for licensure required by the employer for the position which the employee is filling; whether agencies provide employer-paid benefits under NDCC Sections 54-52-27, 54-52-29, and 54-52.6-09.2; and whether agencies provide family leave with pay under NDCC Section 54-52.4-02(5).

The committee learned that almost all agencies pay for employee service awards or employee recognition, reward, or incentive programs. Most agencies follow North Dakota Administrative Code Chapter 4-07-18, which requires agencies to recognize certain service anniversaries of classified employees by implementing a service award program. The committee learned that many agencies provide employer-paid tuition for higher education coursework for employees; however, the

policies are not uniform. The committee learned that most agencies pay employee membership dues for professional organizations and some pay service club dues. The committee learned very few agencies provide employer-paid benefits under NDCC Sections 54-52-27, 54-52-29, and 54-52.6-09.2, and approximately one-half of agencies provide family leave with pay under Section 54-52.4-02(5).

Survey of Comparable States

Human Resource Management Services conducted a survey of other benefits in the 10 states comprising the Central States Compensation Association considered the most comparable to North Dakota's employment market--Colorado, Iowa, Kansas (which did not respond), Minnesota, Missouri, Montana, Nebraska, Oklahoma, South Dakota, and Wyoming.

Concerning service awards for length of service milestones, seven states have policies for providing plaques or gifts at service increments, four states have longevity pay increments, and one state is developing a policy.

Concerning recognition, reward, or incentive programs, seven states have some sort of recognition or reward program or policy for accomplishments, while two states have no statewide program.

Concerning employer-paid tuition for higher education coursework for employees, four states have tuition assistance policies administered statewide, four states have tuition assistance policies administered at the agency level, and one state does not have tuition assistance.

Concerning employee membership dues for professional organizations, three states have a general state policy or union agreements providing dues payments, three states have no state policy but agencies may determine dues payments, and three states have no policy and prohibit dues payments. A further question was asked that if the membership, licensure, or certification is not required but deemed beneficial to the performance of the job, is it allowable? Two states reported that the determination is made at the agency level, one state allows payments in union contracts, five states have no general state policy, and one state does not allow such payments.

Concerning employee membership dues for service clubs, one state indicated that such dues could be incorporated into its incentive award program, one state indicated that payment of such dues is permissible if it benefits the mission of the department, and seven states indicated that such dues are not paid.

Concerning paid leave for care of family members, seven states allow sick leave to be used for the care of family members, and two states do not allow sick leave for the care of family members.

Concerning purchase of retirement service credit, six states allow employees to purchase service credit, two states had sick leave to retirement service credit, one state allows sick leave to be converted to pay for retiree health insurance coverage, and one state has no provision for employees to purchase retirement service credit. Concerning whether employers are allowed to purchase retirement service credit for employees, one state allows agencies to purchase retirement credit if a reduction in force occurs and eight states have no provision for employer purchase of retirement credit.

Agency Training, Tuition, and Professional Dues Policies

The committee reviewed rules adopted by Human Resource Management Services effective July 1, 2008, relating to training and tuition reimbursement. The new training and tuition rules apply to all state and local government agencies, departments, institutions, and boards and commissions that employ individuals in positions classified by Human Resource Management Services. The rules provide an appointing authority may adopt policies to provide training and education opportunities to its employees to learn new required skills or to enhance their current skills, to increase the opportunity for advancement within the agency or state service, to increase proficiency and productivity and improve work performance. The rules also provide that costs of training or educational courses, including tuition and fees, may be paid for by the agency or reimbursed to the employee in accordance with agency policy.

The committee reviewed Office of Management and Budget Policy 209, which governs professional membership dues. This policy provides that the state's payment of dues to professional organizations is not a fringe benefit for state employees. Wherever possible, a membership should be carried in the name of the state agency and not of an individual. The idea behind this approach is to promote transferability of the benefits of the membership. To justify the expenditure of funds, association memberships should be related to an employee's job duties or should be beneficial to the state.

The committee received information from the State Auditor's office that it would be prudent to ensure that guidance or requirements developed by the committee are not duly burdensome on state agencies or result in a loss of flexibility. The committee also learned the State Auditor's office is not finding the types of expenditures reported as unauthorized in a recent Workforce Safety and Insurance performance audit.

Committee Considerations

Service Awards, Tuition, and Dues

The committee considered two bill drafts relating to state employee service awards, employer-paid tuition, and employer-paid professional organization membership and service club dues. Both bill drafts addressed employer-paid tuition, employer-paid membership dues for professional organizations or service clubs, and contained a provision that expenditures made pursuant to rule or policy are not a criminal offense.

One bill draft would have established a specific schedule of state employee service awards based upon incremental years of service. The other bill draft established general authority whereby each state agency, department, or institution, may establish rules or policies for employee recognition and service award

programs. Classified service agencies would be subject to rules adopted by Human Resource Management Services and approved by the State Personnel Board and the Legislative Council's Administrative Rules Committee. Any other agency, department, or institution of the executive, legislative, or judicial branch may adopt similar rules or policies to ensure uniformity and consistency in state government. Notwithstanding any other provision of law, each nonclassified state agency, department, or institution establishing rules or policies for employee recognition and service award programs would be required to submit the rules and policies to the Office of Management and Budget for review and comment and after addressing any comments of the Office of Management and Budget submit the rules and policies to the Legislative Council's Administrative Rules Committee. Within 60 days after the close of each biennial period, each state agency, department, or institution providing an employee service award would be required to file with the Office of Management and Budget a report indicating the individuals receiving a service award, the amount paid, and a statement of the public purpose or benefit of the expenditures. Within 90 days after the close of each biennial period, the Office of Management and Budget would be required to submit to the Legislative Council a report summarizing this information. Expenditures made pursuant to these provisions were deemed to be compensation for services provided to the state and made for a public purpose and not gifts for purposes of Article X, Section 18, of the Constitution of North Dakota.

Concerning employer-paid tuition, both bill drafts provided that each state agency, department, or institution may establish rules or policies to provide employer-paid costs of training or educational courses, including tuition and fees, within budgetary constraints. Classified service agencies would be subject to rules adopted by Human Resource Management Services and approved by the State Personnel Board and the Legislative Council's Administrative Rules Committee. Any other state agency, department, or institution of the executive, legislative, or judicial branch would be authorized to adopt rules or policies to ensure uniformity and consistency in state government. Notwithstanding any other provision of law, each nonclassified state agency, department, or institution establishing rules or polices for employer-paid costs of training or educational courses, including tuition and fees, would be required to submit the rules and policies to the Office of Management and Budget for review and comment and, after addressing any comments of the Office of Management and Budget, submit the rules and policies to the Legislative Council's Administrative Rules Committee. Within 60 days after the close of each biennial period, each state agency, department, or institution providing employer-paid costs of training or education courses, including tuition and fees, would be required to file with the Office of Management and Budget a report indicating the individuals receiving employer-paid costs of training or educational courses, including tuition and fees; the amount paid; and a statement of the public purpose or benefit of the expenditure. Within 90 days after the close of each biennial period, the Office of Management and Budget would be required to submit to the Legislative Council a report summarizing this information. Both bill drafts provided that an employee who receives employer-paid tuition who leaves employment with that employer within two years of receiving the tuition must repay tuition received on a prorated basis. Expenditures for employer-paid training or educational courses, including tuition and fees, were deemed to be made for a public purpose and not gifts for purposes of Article X, Section 18, of the Constitution on North Dakota.

Concerning employer-paid professional organization membership and service club dues, both bill drafts provided authorized agencies, departments, and institutions to pay employee membership dues for professional organizations and membership dues for service clubs when required to do business if membership is primarily for the state. Again, the provisions contained a reporting requirement and a provision that expenditures were not unconstitutional gifts. Finally, both proposals provided that an expenditure made pursuant to a rule or policy is not a criminal offense.

Representatives of Human Resource Management Services testified that nonclassified agencies should report directly to the Legislative Council rather than the Office of Management and Budget.

Employee Performance Bonuses

The committee reviewed the state employee performance bonus program. North Dakota Century Code Section 54-06-30 provides that a state agency may provide monetary performance bonuses to its employees if the agency has had a written employee performance policy in place for more than one year before paying the bonus, the written employee performance evaluation policy required must have at least three levels of performance criteria, and the agency performance bonus program adopted must be a written policy and must be communicated to each employee in the agency. State employees are eligible to receive a bonus only if the employee has held a position in state government for at least one year before a bonus is paid, the employee's overall annual performance evaluation satisfies the agency's performance bonus program criteria for receiving a bonus, and the employee is a full-time or part-time regular nonprobationary employee holding a regularly funded nontemporary position. The section provides that an employee may not receive more than one performance bonus per fiscal year and may not receive more than $1,000 in bonuses per biennium. The section limits agencies paying bonuses during a fiscal year to not more than the number of employees equal to 25 percent of the employees' employed by the agency on July 1 at the beginning of each state fiscal year.

The committee discussed whether the bonus amount should be increased from $1,000 per biennium to $1,000 per fiscal year and whether Human Resource Management Services should be authorized to approve paying bonuses above the 25 percent limitation in this section. The committee considered a bill draft that

increased the performance bonus from $1,000 per biennium to $1,000 per fiscal year and that authorized Human Resource Management Services to approve paying bonuses above the 25 percent limitation upon a showing of special circumstances. Human Resource Management Services was required to report any exceptions granted to the Budget Section of the Legislative Council.

Representatives of Human Resource Management Services testified the bill draft may be problematic in that the exception authorization applies to all agencies and institutions, including agencies and institutions expressly excluded from Human Resource Management Services' jurisdiction. Evaluating exceptions for agencies over which Human Resource Management Services has no overall authority or involvement would be difficult as the agency does not have full understanding or base information for making these decisions. Representatives of Human Resource Management Services proposed that entities not under Human Resource Management Service's jurisdiction report their exceptions to the Legislative Council.

Employee Recruitment and Retention Bonuses

The committee reviewed the state employee recruitment and retention bonus program. North Dakota Century Code Section 54-06-31 authorizes state agencies to develop programs to provide bonuses to recruit or retain employees in hard-to-fill occupations. The committee noted that the section does not contain a definition of hard-to-fill occupation and would be strengthened by defining a hard-to-fill occupation as including an occupation or position in which demand exceeds supply, special qualifications are required, competition with other employers is the strongest, there is a risk of losing an incumbent with rare skills, the position is filled by a highly skilled employee who is in high demand in the marketplace, loss of the employee would result in significant replacement costs, or the position is filled by key personnel.

Representatives of Human Resource Management Services testified that the definition of hard-to-fill occupation would be improved if permissive language such as "or other unique recruitment or retention issue identified and documented by the appointing authority" were added to the definition.

Recommendations

The committee recommends House Bill No. 1029 to provide general authority for state employee service awards and statutory governance for employer-paid tuition and employer-paid professional organization membership and service club dues.

The committee recommends House Bill No. 1030 to increase state employee performance bonuses from $1,000 in bonuses per biennium to $1,000 in bonuses per fiscal year and to authorize Human Resource Management Services to approve paid bonuses above the 25 percent limitation contained in NDCC Section 54-06-30(4).

The committee recommends House Bill No. 1031 to define the term "hard-to-fill occupation" for purposes of the state employee recruitment and retention bonus program.

ENERGY DEVELOPMENT AND TRANSMISSION COMMITTEE

The Energy Development and Transmission Committee is created by North Dakota Century Code (NDCC) Section 54-35-18. The committee has the duty to study the impact of a comprehensive energy policy for the state and the development of each facet of the energy industry, from the obtaining of the raw natural resources to the sale of the final product in this state, other states, and other countries. The study may include the review of and recommendations relating to policy affecting extraction, generation, processing, transmission, transportation, marketing, distribution, and use of energy and the taxation of shallow gas. The statute establishing the committee expires on August 1, 2011.

In addition, the Legislative Council assigned one study to the committee and delegated to the committee the responsibility to receive four reports. Section 1 of House Bill No. 1456 (2007) directed the study of the siting and decommissioning of commercial wind farms, including identification of key issues of public and industry concern; solicitation of public input from local government officials, electric utilities, the wind industry, landowners, farm organizations, and other concerned interests; review of the laws and policies of other jurisdictions; recommendations concerning laws or policies needed in this state to address wind farm siting and reclamation of wind farm sites; and the decommissioning of wind farm sites.

Under NDCC Section 17-05-13, the North Dakota Transmission Authority is required to deliver a written report on its activities to the Legislative Council each biennium. Under Section 54-17.7-13, the North Dakota Pipeline Authority is required to deliver a written report on its activities to the Legislative Council each biennium. In Section 6 of House Bill No. 1462 (2007) the Energy Policy Commission (commonly referred to as the Empower North Dakota Commission) is required to report to the Legislative Council during the 2007-08 interim on the progress and the results of the North Dakota Energy Independence Initiative. Under Section 57-40.6-12, the Emergency Services Communications Coordinating Committee is to provide by November 1 of each even-numbered year a report on the use of the assessed communications services fee revenue and recommended changes to the operating standards for emergency services communications.

The committee submitted this report to the Legislative Council at the biennial meeting of the Council in November 2008. The Council accepted the report for submission to the 61st Legislative Assembly.

COMPREHENSIVE ENERGY POLICY STUDY

Energy Policy

In an effort to create a comprehensive energy policy, the Legislative Assembly passed House Bill No. 1462 (2007), specifically creating NDCC Title 17. The bill redesignated current North Dakota Century Code provisions as within Title 17--Sections 4-14.1-07.1, 4-14.1-07.2, 4-14.1-08, 4-14.1-09, and 4-14.1-10, relating to ethanol plant production incentives from the ethanol production incentive fund; Chapter 6-09.17, relating to the biodiesel partnership in assisting community expansion (PACE) fund being used for interest rate buydowns on loans to biodiesel production facilities; Section 9-01-22, relating to the termination of a wind option agreement; Sections 47-05-14 through 47-05-16, relating to the creation of wind easements and termination for lack of development; Section 47-16-42, relating to the termination of a wind energy lease for lack of development; and Chapter 49-24, relating to the North Dakota Transmission Authority.

House Bill No. 1462 created the 25x'25 initiative, which adopts the goal of having the agricultural, forestry, and working lands of the United States provide from renewable resources not less than 25 percent of the total energy consumed in the United States by January 1, 2025. The initiative defines renewable energy to include biofuels, solar, wind, hydropower, geothermal, carbon recycling, carbon sequestration, use of waste heat, recycling, low emissions technologies that create or use hydrogen, and energy efficiency initiatives.

House Bill No. 1462 also created the Energy Policy Commission for developing a comprehensive energy policy as part of the North Dakota Energy Independence Initiative. The purpose for this policy is to:

- Stimulate the development of renewable and traditional fossil-based energy within the state with the goal of providing secure, diverse, sustainable, and competitive energy supplies to reduce the dependence on foreign energy sources.
- Promote the development of new technologies to decrease dependence on foreign energy supplies.
- Address the growth of fossil fuel and renewable energy industries to encourage the state's competitiveness.
- Address research, development, and marketing of North Dakota-produced energy.
- Address the expansion of existing energy resources and the diversification of this state's energy resource base.
- Evaluate existing tax credits and incentives.
- Modernize and expand this state's energy infrastructure.
- Examine potential innovations to improve environmental conditions through new technologies and review energy industry workforce and training needs and develop a strategy to maximize the state's market opportunities.

The Energy Policy Commission consists of the Commissioner of Commerce, as chairman, and members appointed by the Governor to represent the agricultural community, the Lignite Energy Council, the North Dakota Petroleum Council, the biodiesel industry, the biomass industry, the wind industry, the ethanol industry, the North Dakota Petroleum Marketers

Association, the North Dakota investor-owned electric utility industry, the generation and transmission electric cooperative industry, the lignite coal-producing industry, and the refining or gas processing industry.

In addition to the policy statements in House Bill No. 1462, House Concurrent Resolution No. 3020 (2007) declared that the renewable energy policy of this state includes the support of 25 percent of the state's and nation's energy supply coming from renewable energy resources by the year 2025. The Legislative Assembly also enacted House Bill No. 1506 (2007), which established a state renewable and recycled energy objective that 10 percent of all electricity sold at retail within the state by the year 2015 be obtained from renewable energy and recycled energy sources. In addition, Senate Concurrent Resolution No. 4001 (2007) urged the President and Congress to make the entire nation available for energy development in an environmentally responsible manner.

2007 Legislation

There were numerous bills introduced during the 2007 legislative session that related to energy. The bills mainly related to taxation and governmental entities. Bills on taxation related to property taxes, income taxes, sales and use taxes, coal taxes, oil and gas taxes, and fuel taxes. Bills on governmental entities related to the Industrial Commission, the Legislative Council, the Department of Commerce, the Office of Management and Budget, and the Bank of North Dakota.

The following is a list of legislative changes during the 2007 legislative session which promoted energy development in this state. These changes are organized by the following four categories:

Funds and funding

- Expanded the biofuels PACE interest rate buydown.
- Increased funding to the lignite research fund.
- Created the geophysical, geothermal, subsurface minerals, and coal exploration fund.
- Increased the cap on the abandoned oil and gas well plugging and site reclamation fund.
- Created the geologic data preservation fund.
- Created the biomass incentive and research fund.
- Provided funding for biomass research and education.
- Increased funding to the oil and gas research fund from the oil and gas gross production tax.
- Created the renewable energy fund.

Programs and incentives

- Created a biomass incentive program.
- Encouraged the State Board of Higher Education to create a biomass energy center.
- Created expedited rate recovery for new transmission facilities.

Governmental entities and priorities

- Created the Renewable Energy Council to recommend expenditures from the renewable energy development fund by the Industrial Commission.
- Created the Energy Policy Commission.
- Created the Energy Development and Transmission Committee.
- Made a priority to have carbon sequestration in this state.
- Created the North Dakota Pipeline Authority.

Taxes

- Reduced property tax for wind generation facilities.
- Created a sales tax exemption for materials to process natural gas and oil.
- Reduced and over time eliminates the sales tax on natural gas and fuels used for heating.
- Extended and expanded a sales tax exemption for certain power plant equipment.
- Extended the gross production tax exemption for shallow gas wells for the first 24 months of operation.
- Increased agriculture business investment tax credits and expanded these tax credits to include biofuels production facilities.
- Expanded income tax credits to install geothermal, solar, and wind devices to include biomass and made these tax credits tradable and transferable.
- Reduced the oil extraction tax.
- Allowed for agreements to collect and administer oil and gas taxes on the Fort Berthold Reservation.

The following is a list of other programs and efforts that may relate to the preceding measures or promote energy development:

- Research funding to universities.
- Ethanol production incentives from the ethanol production incentive fund administered by the Office of Renewable Energy and Energy Efficiency of the Department of Commerce.
- Lignite Research Council.
- Lignite Vision 21 Project.
- North Dakota Transmission Authority.
- Sales tax exemptions for carbon dioxide used for enhanced recovery, for biodiesel fuel equipment for sales facilities, and for hydrogen used for an engine or cell.
- Income tax credit to produce biodiesel.

Testimony and Discussion

The committee studied the eight major forms of energy--oil and gas, coal, nuclear, geothermal, ethanol, wind, hydroelectric, and solar power. North Dakota has significant resources in all of these forms of energy except solar. In particular, the committee focused on coal, oil and gas, ethanol, and wind due to the abundance of these resources in this state and the role of state involvement in these forms of energy. In an effort to learn more about these forms of energy, the commission toured the Energy and Environmental Research Center, a wind-to-hydrogen facility, Nabors oil drilling rig No. 688, the Red Trail Energy ethanol plant, an Archer Daniels Midland (ADM) Company canola crush and biodiesel plant, and the Tesoro Refinery.

Coal

The committee received testimony on coal and, in particular, lignite coal in North Dakota. The committee received testimony on generation, transmission, and retail rates. One-third of the energy generated in this state is used in this state and one-half of the energy generated in this state is used in Minnesota. The remainder of energy generated in this state is used by other states. Coal produced 50.8 percent of the electric power in the United States in 2003. In North Dakota, there are approximately 25 billion tons of economically mineable lignite coal. At the present rate of mining, there is enough coal in North Dakota to last over 800 years. Due to this quantity, coal provides a consistent baseload for which long-term contracts may be negotiated. Lignite coal's positives include high reactivity and low mining costs. The main negative with lignite is the high water content. This high water content makes it not cost-effective to ship lignite coal for long distances. The water may be dried out of lignite coal, but the drying has to be done in a controlled manner due to the high reactivity.

Generation

Although there are a number of coal-fired electric generation plants in this state, the last energy generation plant built in North Dakota was in 1986. From the late 1930s to the 1970s the demand for electricity has grown about 10 percent per year. Presently, the growth demand for Montana-Dakota Utilities Company customers is around 1.4 percent per year and the regionwide projection is not much more than 1.5 percent. The growth in demand for electricity in Minnesota is over 5 percent per year.

Present plants have been able to meet the demand of consumers by increasing energy generation through efficiency. For example, a turbine rewind can provide an increase of 5 megawatts to 10 megawatts per turbine. In addition, coal drying and firing tire residue increases efficiency and, in the case of tires, has the additional benefit of reducing mercury. The Coyote Station expects a 4 percent plant efficiency improvement due to the scheduled installation of new high-intermediate pressure turbines. Coal Creek Station has increased from approximately 560 megawatts to around 630 megawatts due to increased efficiency. The committee was informed that it is difficult for a coal plant to burn more coal. If more coal is burned, then the coal plant would need a new air quality permit. The most difficult emissions limit to meet is the particulate limitation. Most plants are at or near the particulate limit.

There are a number of impediments to building new coal-fired electric generation plants. The two greatest impediments are the need for transmission and the effect of future carbon dioxide legislation. There needs to be certainty in the market for the investment of the enormous sums of money needed to build a coal-fired plant. The first step toward certainty is knowing the requirements of expected federal carbon dioxide legislation. The committee was informed that federal preemption in the area of carbon dioxide is necessary for future development.

The committee received information on coal processed into a gas or liquid, instead of electricity. The committee was informed that Great Northern Properties, the nation's largest private coal owner, intends to build a synthetic natural gas plant. The plant will need water for cooling purposes. The water for the plant will come from the water in the seams of coal. The project will use as much air cooling as possible and will be almost water sufficient with the water in the coal seams. The project designers considered using water from oil development; however, that would require infrastructure to transport the water to the plant.

The committee received information on the Great Plains Synfuels Plant. The plant is the only synfuels plant in the Americas. The synfuels plant is located next to the Antelope Valley Station and, as such, can sell the fine coal the synfuels plant is unable to burn to the Antelope Valley Station.

The committee was informed that American Lignite Energy intends to build a coal-to-liquid transportation fuel plant supplied with lignite in North Dakota. The construction decision will be made by 2010 and the plan is to have the plant producing gasoline and other products by 2013 or 2014. The project will produce gasoline, and not diesel, because of marketing studies and because diesel requires a larger investment and more coal. The project would produce half of Tesoro's current production. A major concern is the need for another pipeline out of this state. American Lignite Energy is working with partners and the North Dakota Pipeline Authority to increase this capacity.

The product produced should be competitive with oil at $40 per barrel. As such, the committee was informed the project would not need a subsidy but would need a price guarantee. The guarantee is needed because of the fear the Organization of Petroleum Exporting Countries could flood the market and thus reduce the price of oil below $40 which would shut down the project.

Transmission

The major topics affecting coal on a national basis relate to greenhouse gases and water, but in North Dakota the major issue is transmission. Electric consumption has doubled since 1980, but with few transmission upgrades. In the late 1980s there was 30 percent excess capacity, and now there is approximately 15 percent excess capacity. However, this 15 percent is the level required by reliability standards--the 15 percent is needed for the other 85 percent to be reliably delivered through transmission lines. The export constraint for North Dakota for transporting electricity is approximately 1,950 megawatts, which is about what the state exports. This state generates approximately 4,500 megawatts of energy and the peak demand of this state is approximately 2,000 megawatts. The existing transmission lines are capable of transmitting existing generation, but that may not be the case with new generation.

The major impediments to building transmission are cost recovery and allocation and siting. The Midwest Independent Transmission System Operator (Midwest

ISO) is a Federal Energy Regulatory Commission-approved regional transmission organization that oversees the wholesale electric power grid in 15 states to facilitate nondiscriminatory and open access to the grid. Cost allocation issues within the Midwest ISO footprint is a major issue. The issue is who pays for the transmission line if there is an energy generation plant built in North Dakota and a transmission line is built to Minnesota from that generation plant.

The two main ways to allocate costs are through a license plate or postage stamp system. The license plate rate is a regional rate and a postage rate is nationwide. A major issue is pancaking of rates when electricity moves across different transmission systems that have multiple license plates. If energy moves from the Western Area Power Association to the Midwest ISO area, the tariff is added on and pancaking takes place. The goal is to create a cost allocation system so that those who benefit from the transmission pay for it. The interconnection rules for the Midwest ISO allocate half the cost to the generator and half the cost to the transmission entity. The committee was informed that there may need to be a charge on every electric bill in the United States for large transmission projects.

The committee was informed that public utilities may purchase excess energy on the open market. If higher priced energy is purchased on the spot market, the additional cost is passed through to customers through the fuel cost adjustment clause. The open market is over the entire footprint of the Midwest ISO.

The CapX 2020 plan for Minnesota is a 15-year plan that will relieve reliability problems in Minnesota. There are fairly significant constraints on the system because of growth in Minnesota. The plan was made through the cooperation of 11 utilities to permit four high-voltage transmission lines in Minnesota. The plan is in multiple phases and Phase 3 includes transmission lines out of western North Dakota. The CapX 2020 plan does provide some increased export capabilities from North Dakota to Minnesota. However, this state is basically at the maximum load for transmission to Minnesota.

One difficulty in building a transmission line is siting a transmission line across state borders. In some states, there are groups that do not want any new transmission lines or have the lines limited due to environmental concerns. The Federal Energy Regulatory Commission has backup siting authority for national interest transmission corridors. However, this backstop authority has not been invoked in Minnesota or North Dakota.

Retail Rates

The committee was informed that utility rates have been flat because of construction done in the 1970s and 1980s. Public utilities are entering a new phase of construction. As a result of this construction, certain retail rates will reflect a 25 percent to 30 percent increase in the next 10 years. The average rate is 7.2 cents per kilowatt-hour and that increase will result in a rate of approximately 9.7 cents per kilowatt-hour. By way of comparison, the rate in New York City is approximately 16 cents per kilowatt-hour. The need for increased generation will greatly affect consumers' bills because generation accounts for 70 percent of the electric utility bill.

Carbon Dioxide and Global Warming

The committee received information on global warming. The committee was informed that the preponderance of scientific opinion is that carbon dioxide and temperature are closely related. Although the climate changes with or without human intervention, the scientific community believes that human actions are so large in scale that the pace and scope of global warming have increased. This scientific evidence has created a general consensus that there will be federal legislation for carbon dioxide reduction. This federal legislation is expected regardless of extensive literature stating global warming is not caused by carbon dioxide and is not significantly increased by human activity. Because of the perceived need to reduce carbon dioxide, the committee monitored federal legislation and the Minnesota externality proceedings.

Committee discussion included concern that the major source of carbon dioxide was from China and any action done in the United States was not significant in comparison to China. China has some of the dirtiest coal production in the world. China is building 1,000 megawatts of coal-powered generation each week. The coal plants built in China in one year offset all wind development.

The committee was informed that what the United States does in relation to carbon dioxide emissions is important. It was argued that because the United States is wealthier and uses five times the energy per capita than the Chinese, the United States needs to act for diplomatic purposes.

The committee was informed there needs to be great care taken in crafting a solution to global warming. If the wrong solution is chosen, it will destroy the economy and not reduce global warming. If the federal government sets carbon dioxide emissions standards before there is technology to meet those standards, this may affect the cost of energy in the way that placing ultralow sulfur standards on diesel fuel before the technology was available resulted in a steep increase in the price of diesel fuel. The ultralow sulfur mandate made the once cheapest part of the barrel the most expensive part because, as the committee was informed, the cost of technology was not considered in the mandate.

Federal Legislation

The committee monitored the Lieberman-Warner bill that mandated cap and trade. A cap and trade program determines the quantity of emissions wanted--a cap. Allowances are then used to meet the emissions reduction goals. To meet annual emissions reduction goals, a covered facility must reduce emissions, remit allowances sufficient to cover admissions, borrow from future allowances, or purchase from a trading exchange. The number of allowances is decreased over time. The cost of the Lieberman-Warner bill was estimated at $5.6 trillion. The committee was informed that the Lieberman-Warner bill would not be enacted and that new legislation was not expected until 2010. The

committee was informed that the Lieberman-Warner bill would have been very damaging because it would have required carbon capture and storage before it is commercially feasible.

Public utilities can and do itemize the cost of environmental impacts and can place those costs on a consumer's bill in the same manner that the fuel cost adjustment is a separate line on a consumer's bill. The committee was informed of a formula to determine the cost of carbon dioxide legislation to a consumer. The average North Dakotan's cost is based on the average consumer creating one ton of carbon dioxide per household per month. Any legislation can be reviewed to see the additional cost per ton of carbon dioxide and that cost could be added onto a consumer's monthly bill.

The committee reviewed House Bill No. 1221 (2007), which provides for an automatic passthrough of federal environmental mandates that result in increased cost. The major issue with the bill is that a public utility can recover the cost of federal environmental mandates automatically which removes the incentive for utilities to oppose federal environmental mandates. The bill placed the burden on the Public Service Commission to disapprove the increase and the commission does not have the funds to research these increases.

Minnesota Externality Proceeding

In 2007 the Minnesota Legislature directed the Public Utilities Commission to set externality costs by January 1, 2008, and propose these costs to the legislature. The Minnesota externality proceeding is for resource planning for Minnesota utilities. Minnesota utilities must look at certain factors in determining which resources to use and one of those factors is cost. The externality proceeding adds the cost of carbon dioxide to the cost of fuel, which makes coal less desirable. In the past, Minnesota has proposed a cost of $9 per ton for carbon dioxide on lignite coal, which sells for around $10 per ton. In Minnesota, an electric utility has to use the cheapest power, including externality costs. The additional externality costs make North Dakota lignite noncompetitive.

It was argued that if Minnesota holds all energy from every state to the same standard as North Dakota, this will increase power production in North Dakota because there are very few places other than North Dakota to sequester carbon dioxide. North Dakota will be able to charge people in another state, like Minnesota, for the carbon dioxide sequestration.

In addition to the externality proceeding, Minnesota has a greenhouse gas reduction requirement of 80 percent by 2050. This reduction assumes there will be sequestration programs. The cost of sequestration will be incorporated into the price of the coal.

During the 2007 legislative session, the North Dakota Legislative Assembly appropriated $500,000 for litigation of this matter. At issue is a constitutional question of whether Minnesota can make a determination that substantially affects an industry in another state--North Dakota. The North Dakota Attorney General did not appeal the determination of the Minnesota Public Utilities Commission for two reasons--first, to avoid a piecemeal attack on the Minnesota law, and, second, North Dakota is engaged in dialog with Minnesota to change the law.

The committee was informed that this state could not retaliate against Minnesota by prohibiting North Dakota energy from being shipped to Minnesota because once energy is on the grid it is controlled by the Midwest ISO and not the companies that produce the energy.

Carbon Dioxide Reduction

The current concentration of carbon dioxide in the atmosphere is around 380 parts per million. There were 250 parts per million in the preindustrialized days. Assuming a business-as-usual scenario, children born today will see levels of 1,000 parts per million during their lifetime. The population has quadrupled and energy consumption has increased 16 times in the 20th century. However, the carbon dioxide intensity in the United States has been decreasing for the last 100 years. Intensity recognizes that energy is linked to wealth and carbon dioxide relates to the gross national product. The committee was informed that greenhouse gas emissions may be reduced through renewable energy technologies, advanced high-efficiency energy systems, improved efficiency on existing systems, reduced consumption of energy, and sequestering greenhouse gas emissions.

The committee received information on the Powering the Plains Project. The Powering the Plains Project developed a broad-based roadmap for energy policy. The project created a common analytical framework for a computer model which shows that continuing business as usual and reducing carbon dioxide emissions by 80 percent from 1990 levels by the year 2055 have approximately the same cost. A reduction of 50 percent to 80 percent in carbon dioxide emissions would stabilize the amount of carbon dioxide in the atmosphere. Carbon dioxide lasts for over 100 years in the atmosphere. By comparison, methane lasts for approximately 30 years and nitrous oxide lasts for approximately 300 years.

The committee was informed that there is technology for zero or near zero emissions from a coal-powered power plant. However, this technology is very expensive. The committee was informed that the amount of mercury that is emitted by coal-fired power plants in one year would fit in a Chevrolet Suburban. Mercury is removed because mercury causes problems with mental development and birth defects. The release of mercury by coal-fired plants could produce a mild decrease in the mental faculties of individuals. These individuals would get the mercury into their system through eating fish, not breathing the air. The committee was informed that the increase in fish advisories was due to better analytical techniques used to measure mercury and the benefit of the selenium in fish outweighs the harm of mercury in most fish.

The committee received information on an activated carbon plant in the permitting process near the Falkirk Mine and at an alternative site in North Dakota. The plant is in this state because lignite is the most suitable coal for activated carbon. The plant will provide

activated carbon to clean flue gas of mercury in coal-fired power plants.

The committee was informed that clean coal technologies will need to be developed in the future to meet the electricity needs of consumers through coal-fired generation. Clean coal technologies will reduce carbon dioxide much more than the move to renewable sources of energy. It was suggested that a two cent per kilowatt-hour subsidy be attached to electricity to develop clean coal technologies.

The committee was informed that any technology for clean coal will need economy of scale to be successful. Economy of scale has reduced the kilowatt-hour cost of wind by almost 90 percent and the hope is that the price for clean coal technologies will drop in a similar fashion. It was argued that legislative policy needs to be focused on new technologies and to make these technologies commercial through large-scale demonstrations.

There are reductions in carbon dioxide emissions through present technology by replacing older plants with new plants. For example, the Big Stone II Project will produce 20 percent less carbon dioxide than a similar existing coal plant.

Carbon dioxide is a resource that may be used for enhanced oil and gas production. The Energy and Environmental Research Center's Plains CO_2 Reduction Partnership is working on carbon dioxide sequestration. The partnership includes nine states and four provinces and has over 70 partners representing public agencies, utilities, oil and gas companies, engineering firms, associations and nonprofit organizations, and universities. The partnership is in the first phase and is trying to gauge public understanding, develop databases, identify sequestration opportunities, conduct public outreach campaigns, and develop an action plan. The goal of the Williston Basin test is to validate the sequestration of carbon dioxide in deep carbonate oil reservoirs. The goal of the Zana Project is to validate the sequestration of carbon dioxide-rich acid gas in depleted oil reservoirs. The goal of using carbon dioxide in lignite is to determine the feasibility of simultaneously sequestering carbon dioxide and producing natural gas from a lignite coal seam. Carbon dioxide may be used to displace methane gas in coalfields. This method would be used in areas where there is unmineable coal. The goal of the prairie potholes wetland and grasslands project is to validate and quantify carbon sequestration potential in the prairie potholes wetlands and grasslands. The committee was informed that a carbon dioxide capture and sequestration project will be very expensive.

The Energy and Environmental Research Center's Plains CO_2 Reduction Partnership has done a cursory review of certain geological strata and has done some modeling in this state. The committee was informed that North Dakota is ideally located to lead in using carbon dioxide for enhanced oil recovery because of geological formations to store carbon dioxide and the coincidence of coal and oil resources. Carbon dioxide is inert and nontoxic and is only dangerous in high concentrations. Carbon dioxide has been placed underground for enhanced oil recovery and any danger of carbon dioxide escaping drops over time because the carbon dioxide becomes part of the underground formation. The largest risk of escape of carbon dioxide is after it is initially placed in the ground. Energy has to be added to carbon dioxide to change its chemical makeup. However, it was argued that there needs to be more research on the effects of carbon dioxide sequestration.

The committee was informed that most ethanol plants do not provide the volume of carbon dioxide needed for enhanced oil recovery. The typical ethanol plant produces 8 million cubic feet of carbon dioxide per day from fermentation and 10 million cubic feet per day from the combustion of fuel. The economics of a pipeline to carry the carbon dioxide to the oilfield requires one million cubic feet of carbon dioxide for each mile of pipeline. The Great Plains Synfuels Plant provides 240 million cubic feet of carbon dioxide per day. The committee was informed that mandated carbon dioxide capture and sequestration may make coal gasification the least costly method.

The Energy and Environmental Research Center's Plains CO_2 Reduction Partnership is looking at storage rights and liability issues. There are some draft state regulations and model statutes. The storage of carbon dioxide is quite similar to the storage of natural gas for which many states have laws. The Industrial Commission has drafted rules, which were withdrawn, relating to carbon dioxide storage.

The committee was informed there has been interest in using carbon dioxide for oil recovery in Bakken wells. Although carbon dioxide has been used in fracture jobs, carbon dioxide has not been used for fracture jobs in this state due to the lack of availability. In addition, carbon dioxide may be used for tertiary recovery. In the initial phase of oil recovery, 12 percent to 15 percent of the oil is removed from the well. In the secondary stage of oil recovery, 12 percent to 15 percent is removed through a water flood. In tertiary recovery, another 13 percent of oil may be removed through carbon dioxide, natural gas, or compressed air. It was noted that there has been more oil left in the ground than has been produced from oil wells.

Some carbon dioxide used for oil recovery is produced with the oil. Reclaiming the carbon dioxide used in enhanced oil recovery is essential to the financials. The carbon dioxide and water have to be removed from the oil regardless of whether the carbon dioxide is used again. Carbon dioxide costs $1 per thousand cubic feet and it costs $80,000 per day to buy carbon dioxide to enhance oil recovery.

Wind

One way to reduce carbon dioxide emissions is through alternatives to coal. One alternative is wind. Current installed wind capacity in the United States is 1 percent of the total energy in the United States. With aggressive growth, this number could reach 5 percent by 2020. The demand for wind is growing and North Dakota is ranked first in wind resources. However, the issues with using wind include cost, the need for backup power, and the need for transmission.

To be economically viable, wind needs a federal production tax credit. The production tax credit of

2.5 cents per kilowatt-hour was scheduled to expire in 2008. The production tax credit is periodically renewed for limited amounts of time and wind development tracks the tax credit. Not having long-term production tax credits is a major concern to wind development, especially with the manufacturers of wind tower components. For wind power to be more economically viable there needs to be economy of scale, which requires the steady production of similar wind towers by manufacturers.

The cost for electricity from wind is between six cents and eight cents per kilowatt-hour without a subsidy and not including the cost of backup gas turbines. Electricity from a gas turbine plant costs between 7 cents and 16 cents per kilowatt-hour. The cost for electricity from coal is one and one-half cents per kilowatt-hour, not including the cost of the "wires." Although wind costs more than coal, there is consensus building among consumers for paying more for wind power.

Backup power generation is required for wind because wind cannot provide a consistent baseload. Studies have shown that wind blows less when it is hot and more electricity is needed. The Midwest Reliability Organization allows 10 percent of nameplate capacity as the reliability factor for wind turbines. Therefore, gas turbine generation sources are needed as backup for 90 percent of nameplate capacity. Gas turbines are used as backup to wind power because they are quick to ramp up when the wind changes and are easier and less expensive to build than other power plants. The problems with gas turbines are that the price of natural gas fluctuates, natural gas for electricity generation is the highest cost generation, and natural gas for electricity generation competes with the use of natural gas for the heating of homes and the manufacture of fertilizers.

Ninety percent of all new electric generation in the last 15 years burns natural gas. A usage study shows coal-based electricity stagnant until 2030 and a steep increase in natural gas usage between now and 2030. Because of this increase in natural gas usage, one study shows by 2020 a 44 percent increase in electricity costs.

For wind power to be used, it must enter the transmission grid. The committee was informed that new transmission for wind cannot be justified on a reliability basis. A Minnesota study concluded that 20 percent of energy from wind for Minnesota could reliably enter the present grid. Beyond 20 percent needs new innovation as to storage techniques to address the variability of wind--compressed air and hydrogen. In order to interconnect with the electric transmission grid, each generating project must enter through the interconnection queue with the Midwest ISO. The queue uses the first-in, first-out process. This process has become unworkable because of the number of wind generation projects in the queue. There are 83,000 megawatts of power requesting service in the Midwest ISO area, and there are 64,000 megawatts of renewable energy in North Dakota and South Dakota. The Midwest ISO is working to change the process to prioritize certain projects.

Nuclear

There are 103 nuclear reactors in 64 locations around the United States. This country receives 20 percent of electrical generation from nuclear facilities. Nuclear energy is being reviewed closely to address carbon issues; however, there are large water requirements for nuclear energy and a major issue is spent fuel. The United States is not replacing the nuclear infrastructure and the nuclear infrastructure is relatively old. However, nuclear energy is coming back in favor because of the low cost.

Biomass

The committee received information on the use of biomass for generating electricity. A truss plant in Grand Forks generates electricity out of sawdust and scrap lumber. The energy is generated from a small power plant that is a microgasification plant that gasifies the wood so that it can fire a generator. The committee was informed of opportunities for biomass with landfills, agriculture processing residue, state-owned boilers, the conservation reserve program, and with energy crops.

The United States has little cofiring of biomass with coal by large utilities. The utilities need supply guarantees, low financial risk, and bottom-line profits that biomass does not provide. However, the collocation of ethanol plants near power plants could provide lower production costs for both the ethanol plant and the power plant. Ethanol plant residues are primarily lignin and this could provide 10 percent to 15 percent of the coal in the 500-megawatt polarized coal-fired coal boiler.

Conservation and Efficiency by Consumers

It is assumed that there will be a cost increase for electricity regardless of any action with carbon dioxide. One way of keeping the cost of electricity under control is through efficiency upgrades and conservation by consumers. Efficiency is doing the same with less while conservation is doing without. There is a natural efficiency caused when the cost of electricity goes up because people use less. Generally, each person uses two kilowatts of energy per year.

The committee was informed that Minnesota requires a certain percentage of revenues collected by public utilities to be spent on energy efficiency. The committee was informed that efficiency programs by public utilities should include cost recovery and return on investment comparable to supply-side investment. Any program expenditures need to be recovered as well as the profit for what did not get sold. The committee was informed that the Public Service Commission could allow the same types of programs as Minnesota on a case-by-case basis.

Oil and Gas

The committee received information on the challenges facing North Dakota's oil and gas industry. One major challenge is the need for a trained workforce. There are numerous well-paying jobs in the oilfields. To address workforce problems, the petroleum industry has targeted advertising and has partnered with Job Service North Dakota. The rig training program at Williston State

College can accommodate nine people for each eight-day session. Williston State College also provides a two-week safety training course and a two-week hazardous materials training course.

The committee received information on drilling rigs and the tax incentives for the Bakken Formation enacted during the 2007 legislative session. The committee was informed that, as a result of these incentives, there has been a great increase in rig activity in the Bakken Formation. Each rig provides approximately 120 jobs. Due to the increased activity in the Bakken Formation, a workforce of at least 3,000 people per year is expected to be needed for the next four years. All this activity results in about $400 million in direct economic impact, $600 million in indirect economic impact, and $110 million in taxes collected by this state. The committee was informed that 50 percent to 60 percent of the wells make money and there are no dry wells in the Bakken Formation. The major issue for wells in the Bakken Formation is the mechanics of fracturing the rock to provide enough oil for the well to be profitable.

The Bakken Formation is 50 feet to 90 feet thick, and drilling is done in the middle of the formation which is 30 feet to 70 feet thick. The rock is not porous or permeable and fractures have to be found or made in the rock to produce oil. Typically, drilling in the Bakken is two miles down and two miles horizontal. Fracturing is done by injecting sand and water under high pressure. It takes weeks to set up a fracture job that takes 5 hours to 6 hours.

The committee was informed that the oil and gas research fund contributed $700,000 to a $14 million project with the big oil players in the state. The project is for testing fracturing techniques and using carbon dioxide to remove more oil. The information from the project is proprietary for one year.

The committee received information on natural gas processing. The committee was informed that the sales tax exemption for natural gas facilities was meant to reduce the flaring of natural gas and has had an immediate effect. There are plans to have gas plants by Parshall and Ray and there will be expansions of existing plants.

The Tioga Gas Plant was built in the early 1950s and gathers gas from 500 wells. The fractional train at the plant pulls out propane, butane, natural gas, sulfur, and crude oil. The plant averages 97 percent capacity. The gas is moved to the plant by pipeline and transported from the plant by rail. The committee was informed it will cost approximately $110 million to upgrade and modernize the plant. A new plant would cost $500 million to $600 million. A pipeline costs $100,000 to $200,000 per mile and there needs to be a field of wells to justify the cost. The committee was informed Bakken Formation wells have natural gas that is ideal for natural gas processing but the Bakken wells tend to be isolated from one another.

Refining

The committee received testimony on refining. In 1985 there were 223 refineries in the United States and in 2003 there were 144. The reason for the reduction in refineries is because the return on capital investment for refineries is around 5 percent. The Tesoro Refinery in Mandan has a 60,000-barrel-per-day nameplate. The 10 year plan for the Mandan plant is a 15 percent expansion. The committee was informed that the Tesoro Refinery could supply North Dakota with all the diesel and gas required by the state if all sales were in North Dakota. However, 60 percent of gas and 25 percent of diesel from the refinery goes to Minnesota. Most refineries, including the refineries in Wyoming and Minnesota, refine sour crude. The Tesoro Refinery is important because it can refine North Dakota sweet crude.

The Tesoro Refinery is for sweet crude oil and does not have a coker. Sulfur is what makes crude oil sour. A coker allows a refinery to refine sour crude. However, a refinery with a coker may refine the large quantity of sour crude imported from Canada. Because there is a $10 to $15 discount per barrel for sour crude, a refinery would prefer to refine sour crude rather than sweet crude.

The crude oil from Bowman County is sour crude and does not work in large quantities for refining at Mandan. The discounts for Bowman County oil are because it competes with Canadian oil, both of which are sour.

The committee discussed the construction of a new refinery. The committee was informed that a new refinery would not be able to compete with expansions in existing refineries because of cost. A new refinery would require an environmental impact statement, and consequently it would take approximately 10 years to complete a new refinery. Expanding a refinery takes approximately three years. If a refinery is expanding and there is no major increase in emissions, only state permits are required. The committee was informed that the regulatory environment in North Dakota is good because to get permits to expand it takes approximately three months, whereas in other states it may take up to three years.

The committee received information on the limits to expansion. One limitation is the pipeline capacity of refined product from the refinery. Without extra pipeline capacity, the committee was informed that there will not be expansion of refining in this state. A refinery can use the same pipeline for all the products it produces. A shift from gasoline to diesel in the pipeline takes about one week.

The committee was informed that it costs one cent per hundred miles of pipeline to move a gallon of finished product. By comparison, it costs three cents per hundred miles of highway to move a gallon of product by truck and the cost of railroads is somewhere in between the costs for pipelines and trucks. Expansion of the Tesoro Refinery by 15 percent will require a pipeline for refined products to carry this added capacity. Although pipeline capacity may be increased with pumps and drag reducing agents, there will need to be a loop in the pipeline to Jamestown.

Oil Pipelines

The Canadian tar sands oil formation affects oil transportation in this state because 2.5 million barrels

per day from the tar sands are transported by pipeline. A pipeline that moves Canadian crude oil to the Gulf of Mexico refineries would provide crude oil to those refineries and would displace their use of Venezuelan crude oil. Once the Keystone pipeline is built, it will move Canadian crude oil and will free up capacity for North Dakota oil. Construction on the Keystone pipeline will begin in North Dakota in 2008 and pumping stations will be completed in 2009. The pipeline is expected to be completed by early 2011.

Petroleum Marketers

The committee was informed that the industry of petroleum marketing looks bleak. The North Dakota Petroleum Marketers Association expects 20 percent of petroleum marketers to fail in the next year. Petroleum marketers are not only important to the oil industry, petroleum marketers are important to the ethanol industry because of the distribution of ethanol. In addition, petroleum marketers are important to customers because marketers allow customers to purchase petroleum products.

Alternative Fuels

The committee received information on ethanol, biodiesel, and hydrogen. The impact of biofuels on carbon dioxide is unknown because increased demand for commodities for biofuels has resulted in conversion of forest and prairie to farmland. Regardless of the effect on carbon dioxide, however, any bioenergy product offers the benefit of energy security.

The committee was informed that using current agriculture methods, 15 billion gallons of corn ethanol per year may be sustained. For over 15 billion gallons per year, there needs to be a genetic breakthrough or there needs to be more cellulosic ethanol produced. The United States currently produces 5.6 billion gallons of corn-based ethanol per year. Corn-based ethanol is subsidized at $.51 per gallon. In addition, there is a subsidy for capital investment in ethanol plants. The second generation of ethanol production will be wheat and barley, and the third generation will be cellulosic switchgrass. At present there is enough biomass for 600 billion gallons of ethanol per year if the residue from crops is used. A subsidy of approximately $2.50 per gallon would be required for cellulosic ethanol to be competitive at present cost. In addition, the materials used for cellulosic ethanol have problems because of bale storage, competition with feedstock for cattle, and competition for land to plant mixed grasses instead of food for human consumption. Six cellulosic ethanol plants have been funded by the federal government and should be running in three years to four years. These plants will be located in California, Colorado, Florida, Georgia, Idaho, and Kansas.

The committee was informed that ethanol has fewer British thermal units than gasoline and most of the loss in gas mileage comes when the vehicle is working hard. The committee was informed the loss in mileage is around 20 percent. E85 is a high performance fuel with octane over 100, and if a vehicle is designed to run on E85, the vehicle has the same performance and more horse power than gasoline. The problem with flex-fuel vehicles in the United States is that the vehicles are designed to burn gasoline primarily and ethanol secondarily.

One important factor to the profitability of a corn ethanol plant is the sale of the remaining feedstock product after the making of the ethanol. For every $10 per ton saved on shipping, $3.2 million is made by an ethanol plant. If wet byproduct can be sold, the plant does not have to dry the byproduct with natural gas. One million five hundred thousand head of cattle could be fed in this state with the leftover grains from corn ethanol production. A livestock feedlot near an ethanol plant could be mutually beneficial to the plant and the feedlot. The committee was informed that ethanol producers make 10 cents to 15 cents per gallon profit and this profit is shrinking.

In addition to creating more demand for the wet feed byproduct, increasing demand for ethanol would increase profitability. There are 24,000 flex-fuel vehicles in North Dakota and it does not cost much more to make a flex-fuel vehicle than a vehicle that uses only gasoline. Chrysler and General Motors have stated that 50 percent of the vehicles made by these companies will be flex-fuel vehicles by 2012.

An ethanol plant takes between three gallons and three and one-half gallons of water per gallon of corn-based ethanol and 70 percent of the water leaves the plant through the cooling tower. The remainder stays in the byproduct. The typical plant discharges little or no water in liquid form. Switchgrass would require between four gallons and five gallons of water for a gallon of cellulosic ethanol.

Biodiesel

The committee received information on the ADM biodiesel plant. The committee was informed that the biodiesel plant is in North Dakota because of the sales tax exemption, the biodiesel PACE program, and because 95 percent of canola produced is from North Dakota. Biodiesel may be made out of canola, animal fat, and yellow fat. Although the ADM plant can crush canola, the plant may also make biodiesel from vegetable oil. Not all biodiesel plants have crush plants and some biodiesel plants purchase vegetable oil on the open market. Some plants lease oil to food processors before the plant turns the oil into biodiesel.

The committee was informed that the ADM plant does not need a countercyclical program, but the program may be needed for plants that buy oil on the market. The purpose of a countercyclical program would be to keep plants from shutting down, not to guarantee a profit. The program would pay when the cost of vegetable oil is high. Committee members discussed whether the state should have a safety net program when there is a profitable market for the oil as food. As such, a countercyclical program would provide an incentive to plants not to crush canola.

The committee was informed a countercyclical program may be needed to grow the industry because there are very tight margins and a large investment required for a biodiesel plant. With a countercyclical

program there could be more biodiesel plants without crushing facilities.

Hydrogen

The committee toured the wind-to-hydrogen facility south of Minot. The hydrogen is meant for use as a fuel in automobiles. The hydrogen in automobiles is contained in carbon fiber tanks. These tanks are very strong and dissipate the hydrogen straight up when punctured. The danger to the occupants of the automobiles is the same or less than with gasoline tanks. The vehicles that use hydrogen also use gasoline when additional power is needed. Oxygen is a byproduct of making hydrogen and may be sold if there is enough oxygen to be marketable.

Bill Drafts Considered by the Committee

Extension of Taxable Value of 1.5 Percent Assessed Value for Wind Generators Until 2015

The committee considered a bill draft to extend the reduction in taxable value from 3 percent to 1.5 percent of assessed value for a centrally assessed wind turbine electric generation unit with a nameplate generation capacity of 100 kilowatts or more from January 1, 2011, to January 1, 2015. This date relates to the date of construction. The committee was informed that a 100-kilowatt wind tower is a relatively small turbine. All commercially and centrally assessed real property of investor-owned utilities is 10 percent.

Under the bill draft there were three tax rates. Some older wind farms are at the original rate of 3 percent which was because wind towers produce energy approximately one-third of the time or at one-third of nameplate capacity. Some wind farms under a purchase power agreement are at 1.5 percent until the power purchase agreement ends, and the newest wind farms are at 1.5 percent. The committee was informed that the original legislation was for a tax rate of 3 percent so there would be development of wind. Two companies developed wind farms with that incentive. Due to inflation, the rate was lowered to 1.5 percent. The committee was informed that this rate competes with other states as well. Lowering the 3 percent wind farms to 1.5 percent would not provide an incentive with respect to those wind farms already developed and would reduce the tax base in the counties with those wind farms and raise the taxes on other property owners in the county. Lowering the taxes before wind development occurs does not affect a county because the county is not losing anything. The power purchase agreement language was removed because some owners of turbines were starting to use the power, so there was not any power purchase agreement. Power purchase agreements are generally from 20 years to 25 years in length.

Permanent Sales and Use Tax Exemption for Wind-Powered Facility

The committee considered a bill draft to make permanent the sales and use tax exemption for materials used in the construction or expansion of a wind-powered facility. The exemption applied to the equipment on the tower. At present, areas of energy other than wind have a permanent exemption.

Income Tax Credit for Renewable Energy Extended Until 2015

The committee considered a bill draft to extend the 15 percent income tax credit for the installation of geothermal, solar, wind, or biomass energy devices from an end date of January 1, 2011, to an end date of January 1, 2015, allow a credit carryover of 10 years, and limit the sale of unused credits to these credits earned before January 1, 2011. The credit is a 5 percent credit for three years and is 15 percent in total. The committee was informed that the 2015 sunset was chosen as the time by which these industries need to be weaned from incentives. The committee was informed that the sunset is seven years away and it takes five years to move a project through the Midwest ISO queue.

Under the bill draft, a generator of a credit can sell the credit in a power purchase agreement or to any taxpayer that constructs or expands an electricity transmission line. This is capped at $3 million per biennium. As such, the credit was meant to encourage transmission. The committee was informed that this is not the best way to encourage transmission. The only other tax credit that is salable is the research and development tax credit.

The committee was informed that the fiscal impact of this bill draft was beyond the 2007-09 biennium and the fiscal impact for the 2009-11 biennium is zero. Further fiscal information could not be provided because at least five corporations had not taken advantage of this tax credit in 2006 and at least five corporations are needed for the Tax Department to release information.

The committee amended the bill draft to change the date after which tax credits may be carried over for 10 years. The date was changed from December 31, 2008, to September 30, 2008. The date was changed so that Otter Tail Power Company would have the longer carryover for the Ashtabula wind project in Barnes County which will be completed before December 31, 2008. The company did not want to stall the project until after that date because the company wanted to be assured of receiving federal production tax credits that were scheduled to expire before December 31, 2008. The committee was informed that any decrease in the price of wind is passed on to the customers.

Oil Extraction Tax Exemption for Tertiary Recovery Extended to Unlimited Duration

The committee considered, but does not recommend, a bill draft that would have extended the oil extraction tax exemption for tertiary recovery projects from 10 years from the date of incremental production to an unlimited duration. There are three means of tertiary recovery--by natural gas, by high air pressure, and by carbon dioxide. The first two are being used and developed without an incentive. The committee was informed that the bill draft was intended to benefit the lignite industry by incentivizing the capture of carbon dioxide so the carbon dioxide has a use--tertiary oil recovery. However, the bill

draft was not limited to tertiary recovery by carbon dioxide.

The committee considered a bill draft to extend the oil extraction tax exemption for tertiary recovery projects using carbon dioxide from 10 years from the date of incremental production to an unlimited duration. The committee was informed that carbon dioxide is not being used for enhanced oil recovery in this state but is being used in Canada. There is not any additional carbon dioxide in this state because all available carbon dioxide is being shipped to Canada. By removing the expiration date on the tax exemption, the bill draft would extend the lives of carbon dioxide projects and reassure carbon dioxide suppliers when determining whether to make capital investments. There are opportunities for carbon dioxide capture at the Antelope Valley Station and certain ethanol plants. The committee was informed that there will be legislation introduced next legislative session to provide an incentive to turn a tertiary oil recovery project into a carbon sequestration project.

Sales and Use Tax and Severance Tax Exemptions for Beneficiated Coal

The committee considered a bill draft to include a power plant that uses beneficiated coal--coal with improved physical, environmental, or combustion qualities--within the sales and use tax exemption and include a severance tax exemption on coal purchased for coal beneficiation which is used in an agricultural commodity processing facility. The severance tax exemption is for coal and beneficiated coal used in agricultural commodity processing facilities. The agricultural commodity processing facilities are buildings, structures, fixtures, and improvements used or operated primarily for the procession or production of marketable products from agricultural commodities. Current law applies the exemption to coal used in agricultural procession or sugar beet plants. This makes the language in the sales tax statute and coal severance tax statute similar.

Extension of Coal Conversion Tax Exemption for Beneficiated Coal for Repowering

The committee considered a bill draft to extend the coal conversion tax exemption for repowering to include an electrical generating unit that uses beneficiated coal. The bill draft limited the repowering exemption to units that complete repowering. Current law provides a five-year exemption from the state portion of the coal conversion tax for the plant and an optional exemption from the county's portion of the tax for the plant, even if only one of the plant's units has been repowered. The bill draft limited the exemption to the repowered unit.

Energy Conservation and Efficiency Standards for Buildings

The committee considered, but does not recommend, a bill draft that would have required the Division of Community Services to adopt rules for construction standards for public buildings that are consistent with or exceed the silver building rating of the Leadership in Energy and Environmental Design (LEED) rating system for new commercial construction and major renovation projects. The bill draft would have applied to new buildings in excess of $5 million and for the extension of an existing structure in excess of $2 million. The bill draft would have provided for an exemption from the construction standards if the cost of compliance significantly outweighed the benefits. The bill draft was based on laws adopted in Washington and Connecticut.

The committee considered, but does not recommend, a bill draft that would have required the Division of Community Services to adopt rules for construction standards for public buildings that are consistent with or exceed the silver building rating of the LEED rating system for new commercial construction and major renovation projects. The bill draft would have applied to new buildings in excess of $2,000,000 and for the extension of an existing structure in excess of $500,000. The bill draft would have provided for an exemption from the construction standards if the cost of compliance significantly outweighed the benefits.

The committee was informed that the LEED standards of certified, silver, gold, and platinum address issues beyond energy efficiency--enhanced sustainability and the use of renewable resources. A 2004 United States General Services Administration study found that the hard costs of the silver LEED standard were up to $9.57 per square foot. The soft costs were $.41 to $.55 per square foot. The committee was informed that sustainability does not necessarily reduce costs over time.

The committee was informed that the certification costs can be as high as $80,000. The committee was informed that some political subdivisions build to high standards, but do not certify in order to save money.

The committee considered, but does not recommend, a bill draft that would have required the 2006 International Energy Conservation Code standards for energy conservation in any new building construction. Current law refers to an energy code based on the 1993 model code, which is discretionary for local jurisdictions. The committee was informed that the 2006 version is the current nationally accepted version and the adoption of this version would bring this state into compliance with federal law. However, federal law does not have a penalty for noncompliance. The committee was informed that the upfront costs are higher with efficiency standards, but over time efficiency standards are the most cost-effective. The energy standards in the bill draft would have been shown to repay the upfront costs in 2.4 years for a commercial building and 3.9 years for a residential building.

The committee received testimony on concerns with imposing energy standards. The committee was informed that most builders would want guidance with the new standard. The energy standards are written for engineers and architects and may be difficult to understand by residential builders. The Office of Renewable Energy and Energy Efficiency would provide training on the energy code. Although the bill might affect affordable housing, the return on investment occurs in a relatively short time considering the life of homes, businesses, and especially public buildings.

Another concern was enforcement in rural areas. It was suggested that enforcement could be achieved through a joint powers agreement with a larger city or through a contract with an engineer.

The committee was informed that there would not be any additional costs for residential buildings because these buildings are already being built to or exceeding the energy standards. The additional cost may occur with some smaller commercial buildings. The main areas of deficiency are windows, walls, and controls. The energy standards require advanced controls, instead of a simple thermostat, to control heating and cooling. State buildings are built to the Energy Star rating, which exceeds the energy standards in the bill draft.

The committee considered, but does not recommend, a bill draft that would have required local jurisdictions, including jurisdictions operating under a home rule charter, to enforce the 2006 International Energy Conservation Code standards for energy conservation in any new commercial building and would have allowed a local jurisdiction to enforce the standards for residential building.

Committee discussion noted that the idea for efficiency standards started in the committee with applying higher standards to public buildings due to the long life of the buildings and potential savings over the long term. In addition, the mandate on local jurisdictions would send the message that the state does not trust local governments to make reasonable decisions.

Sales and Use Tax Exemption for Construction of Natural Gas System for Gas Collected From Oil Wells

The committee considered a bill draft to include within the sales and use tax exemption for the construction or expansion of a system used to compress, process, gather, or refine gas from an oil well, rather than only a gas well, and provide for a certificate of qualification for the exemption from the Tax Commissioner. The bill draft addressed House Bill No. 1462 (2007), which incentivized gas gathering. The 2007 legislation did not by definition include the oil wells that produce under 50 percent gas, which some committee members thought were included. The bill draft included gas gathered from all oil wells.

Construction and Gathering Pipelines Excluded From Public Service Commission Siting Jurisdiction

The committee considered a bill draft to change the definition of construction to exclude from the siting jurisdiction of the Public Service Commission construction conducted wholly within land for which a utility has previously obtained a certificate of site compatibility or a route permit from the commission and to exclude actions conducted wholly within land on which is located an energy conversion facility or transmission facility that was constructed before April 9, 1975. In addition, the bill draft changed the definition of certain pipelines to exclude from the siting jurisdiction of the Public Service Commission pipelines with an inside diameter of four inches or less or a length of one mile or less and gathering pipelines as defined by federal law. The committee was informed that the small and short pipelines are not "transmission" facilities.

Although not a legislative proposal from the Energy Policy Commission, the commission identified this area as an area for future legislative change. The bill draft will save the industry resources in siting a pipeline.

Shortened Time for Designation of a Transmission Facility Route

The committee considered a bill draft to reduce the time allowed for the Public Service Commission to designate the route for a transmission facility from six months to three months after receiving the application.

The Public Service Commission testified against the bill draft. The committee was informed that the commission acts in a timely manner at present. There are statutory requirements for public hearings in the siting process that take time beyond the decisionmaking process.

Committee discussion noted that three months is a long enough time to make a decision and the longer the process takes, the higher the cost of the project.

Recommendations

The committee recommends Senate Bill No. 2031 to extend the reduction in taxable value from 3 percent to 1.5 percent of assessed value for a centrally assessed wind turbine electric generation unit with a nameplate generation capacity of 100 kilowatts or more from January 1, 2011, to January 1, 2015.

The committee recommends Senate Bill No. 2032 to make permanent the sales and use tax exemption for materials used in the construction or expansion of a wind-powered facility.

The committee recommends Senate Bill No. 2033 to extend the 15 percent income tax credit for the installation of geothermal, solar, wind, or biomass energy devices from an end date of January 1, 2011, to an end date of January 1, 2015, allow a credit carryover of 10 years, and limit the sale of unused credits to the credits earned before January 1, 2011.

The committee recommends Senate Bill No. 2034 to extend the oil extraction tax exemption for tertiary recovery projects using carbon dioxide from 10 years from the date of incremental production to an unlimited duration.

The committee recommends Senate Bill No. 2035 to include a power plant that uses beneficiated coal within the sales and use tax exemption and includes a severance tax exemption on coal purchased for coal beneficiation which is used in an agricultural commodity processing facility. The severance tax exemption is for coal and beneficiated coal used in agricultural commodity processing facilities.

The committee recommends Senate Bill No. 2036 to extend the coal conversion tax exemption for repowering to include an electrical generating unit that uses beneficiated coal. The bill limits the repowering extension to units that complete repowering. The

current exemption is applied to electrical generating plants.

The committee recommends Senate Bill No. 2037 to include within the sales and use tax exemption the construction or expansion of a system used to compress, process, gather, or refine gas from an oil well, rather than only a gas well, and provides for a certificate of qualification for the exemption from the Tax Commissioner.

The committee recommends House Bill No. 1032 to exclude from the siting jurisdiction of the Public Service Commission construction conducted wholly within land for which a utility previously has obtained a certificate of site compatibility or a route permit from the commission and to exclude actions conducted wholly within land on which is located an energy conversion facility or transmission facility that was constructed before April 9, 1975. In addition, the bill excludes from the siting jurisdiction of the Public Service Commission pipelines with an inside diameter of four inches or less or a length of one mile or less or gathering pipelines as defined by federal law.

The committee recommends House Bill No. 1033 to reduce the time allowed for the Public Service Commission to designate the route for a transmission facility from six months to three months after receiving the application.

SITING AND DECOMMISSIONING OF COMMERCIAL WIND FARMS STUDY

As introduced, House Bill No. 1456 (2007) required the Public Service Commission to conduct the study of the siting and decommissioning of commercial wind farms. The legislative history reveals that two of the reasons for changing the responsibility for the study from the Public Service Commission to the Legislative Council were budgetary concerns of the Public Service Commission and the Legislative Assembly being the policymaking branch of government. The main issue discussed in the legislative history was at what level siting should be within the jurisdiction of the Public Service Commission; so much so that the House Natural Resources Committee considered an amendment reducing the threshold for Public Service Commission jurisdiction over siting from 100 megawatts to 50 megawatts.

The impetus for the bill came from a wind farm in Spring Valley Township in Dickey County. Because the facility was below the threshold for Public Service Commission jurisdiction and the county did not have or make zoning regulations, the township was forced to make zoning regulations for the siting of a wind farm.

Other Law and Legislation

A major piece of legislation affecting siting and decommissioning approved during the 2007 Legislative Assembly was House Bill No. 1317. House Bill No. 1317 allows the Public Service Commission to adopt rules governing the decommissioning of a commercial wind energy conversion facility. The bill provides that the rules may address:

- The anticipated life of the project.
- The established decommissioning cost in current dollars.
- The method and schedule for updating the cost of decommissioning and restoration.
- The method of ensuring that funds will be available for decommissioning and restoration.
- The anticipated manner in which projects will be decommissioned and the site restored.

In addition, the bill reduces the taxable valuation of a centrally assessed wind turbine electric generation unit with a nameplate capacity of 100 kilowatts or more from 3 percent to 1.5 percent of assessed value if construction of the unit is completed after June 30, 2007, and before January 1, 2011. The dates were changed in House Bill No. 1018 (2007) to allow the reduced taxation for the construction of a unit completed after June 30, 2006, and before January 1, 2011.

Current law relating to wind energy conversion siting is contained in NDCC Chapter 49-22, which relates to the siting of any energy conversion and transmission facility that meets the criteria of the chapter. Under Section 49-22-03, to be an energy conversion facility, the plant must be designed for or capable of generating 100,000 kilowatts or more of electricity. House Bill No. 1283 (2005) increased the threshold of an energy conversion facility from a facility that generates 50,000 kilowatts or more of electricity to a facility that generates 100,000 kilowatts of electricity. Siting that is not within the jurisdiction of the Public Service Commission falls within the zoning jurisdiction of counties and townships. Generally, the county has zoning jurisdiction unless there is an organized township with zoning regulations.

Once the jurisdiction of the Public Service Commission is engaged under NDCC Chapter 49-22, a utility needs a certificate of site compatibility from the Public Service Commission under Section 49-22-07. The procedure to receive this certificate begins with a letter of intent from the utility to the commission followed by an application for a certificate under Section 49-22-08. The application requires information on the facility, including the environmental impact of the facility, the need for the facility, a comprehensive analysis supporting why the location is best-suited for this facility, mitigative measures for foreseen adverse impacts, and other information. There are a number of statutory factors under Section 49-22-09 which the commission must consider when evaluating and designating sites.

After notice and a public hearing, the commission may designate a site for the proposed facility. Under NDCC Section 49-22-13, the commission must hold public hearings in the county in which any site is proposed to be located. Under Section 49-22-16, the issuance of a certification of site compatibility is the sole site approval required to be obtained by the utility. However, a certificate of site compatibility does not supersede or preempt any local land use, zoning, or building rules and a site may not be designated which violates these rules. In addition, utilities subject to Chapter 49-22 must obtain state permits required to construct and operate energy conversion facilities and must follow the rules of any state agency.

Other States

Some states have facility siting guidelines. According to the American Wind Energy Association, the following states have the listed thresholds for state jurisdiction:

- Colorado - 2 megawatts.
- Connecticut - 1 megawatt.
- Iowa - 25 megawatts.
- Maine - Over 20 acres.
- Maryland - 70 megawatts.
- Minnesota - 5 megawatts.
- Nevada - 150 kilowatts.
- New Hampshire - 30 megawatts.
- New York - 80 megawatts.
- Ohio - 50 megawatts.
- Oregon - 105 megawatts.
- South Dakota - 100 megawatts.
- Vermont - All.
- Washington - 350 megawatts.
- Wisconsin - 100 megawatts.

Testimony and Discussion

The committee received updates throughout the interim from the Public Service Commission on the activities of the commission. In particular, the committee monitored the siting of new wind farms and the decommissioning rules adopted by the commission.

The committee was informed that the Public Service Commission adopted decommissioning rules. The rules are retroactive and exempt wind farms that are under 500 kilowatts. These are typically the type of towers that are privately owned. Basically, the commission has jurisdiction over the decommissioning of all commercial wind facilities. The rules provide for a financial mechanism that satisfies the commission that the decommissioning process will be completed. The rules require a decommissioning plan that will include information so the site will be restored. The rules do not require the land to be restored to the same topography but do contain enough latitude so the site can be improved on decommissioning. The rules require cables to be buried at least 24 inches under the soil. Committee discussion expressed concern over this depth because, although the wires are not live, some farming processes go deeper than 24 inches. In addition, a wire that is 24 inches under the ground could be within 24 inches of the surface years later because of erosion. The committee was informed, however, that it is the regular practice to bury wires 24 inches in this state.

The committee was informed that there are commonalities among states, but states differ in the scope of guidelines and in primary jurisdiction for siting decisions. In some states, siting authority rests with a local branch of government, while in other states, primary siting authority rests at the state level. When primary siting authority rests at the state level, a variety of agencies may be involved, including state environmental protection agencies, departments of transportation, economic development entities, and public utilities regulation. Siting approvals for wind facilities vary significantly by state and these processes fall into five main categories:

1. Mandatory, state-level wind siting statutes.
2. Voluntary guidelines for siting within states.
3. Model ordinances for local governments to apply.
4. Local government siting rules.
5. Voluntary checklists and resources for local governments to recommend.

The committee received information on this state's siting rules. If a wind farm has fewer than 100 megawatts, siting is done by local government. There is no secondary authority with the Public Service Commission. If there is siting authority with the commission, there is decommissioning authority as part of the siting authority.

The committee was informed that problems exist whenever a new industry comes into the state and it was argued that the state needs to set standards for wind tower siting, especially as to setbacks. The industry standard is five rotor blade diameters from the property line as the prevailing winds blow and three rotor blade diameters otherwise. Without this standard, first-come, first-served is the rule and it was argued that this is not fair when two adjacent wind farms begin a project at about the same time.

The committee received testimony in favor of the state regulation that includes the industry standard for setbacks--the Minnesota law. The reason for setbacks is because the wind wake extends downwind up to 8 times to 11 times the turbine rotor diameter. It was argued that wind should be treated like oil and gas wells--as a shared resource--because the property owner affected by a wind wake has a property interest in the wind. The committee received information on wind resource-based compensation for cooperative development. Under this plan, the landowner hosting the turbine would receive 25 percent of the turbine payment and the remainder would be allocated in proportion to the percentage of wind wake affecting each landowner's property.

The committee was informed that state setbacks would prevent competition among counties for wind projects. In addition, the uniformity would provide for the orderly and consistent development for a new industry. In addition, it would be easier for companies building wind towers. Committee discussion noted that lowering the threshold for Public Service Commission jurisdiction would make this state not competitive with South Dakota. In addition, a lowered threshold would take power away from local government. The committee was informed, however, that the regulation of wind farms by local government can be a burden and the focus should be on protecting landowners.

The committee received testimony against strict setback requirements. A strict setback requirement could prevent a viable wind farm due to an area in which a wind farm is not viable. Because of the prairie geology in this state, there could be a high point ideal for a wind tower within the setback of a low point that would not ever have a wind tower built on it.

The committee reviewed the effect of wind farms on wildlife. In particular, the committee received testimony on the effect of wind farms on birds. The committee was informed that there has been a high level of decline of birds in native grasslands. A direct impact is the collision of birds with rotor blades. An indirect impact is habitat fragmentation. Roads for wind farms placed on native prairies increase predation and brood parasitism. Another indirect impact is that hunting is not allowed around wind towers and people do not engage in birding.

The committee was informed that the Northern Plains Wind Energy Forum is promoting wind power and safeguarding wildlife through voluntary guidelines. The guidelines have been drafted with involvement of the major wind power developers in this state. The committee was informed that the concern is not with these companies but with companies that may be more motivated to develop sensitive areas without a concern for wildlife. It was argued that there may need to be incentives for companies to follow the guidelines. In addition, there may need to be an incentive to not develop wind power in areas with good wind and great habitat.

NORTH DAKOTA TRANSMISSION AUTHORITY REPORT

The North Dakota Transmission Authority provided a written report entitled *North Dakota Transmission Authority: Annual Report - July 1, 2007 to June 30, 2008*. The North Dakota Transmission Authority has been working with the Energy Policy Commission, the North Dakota Public Service Commission, the Minnesota Public Utilities Commission, the Midwest ISO, the Upper Great Plains Transmission Coalition, the congressional delegation, and other interested parties to develop and promote transmission in this state. A major issue for the North Dakota Transmission Authority is to have federal tax exemption for bonds issued by the authority so that the bonds are competitive with other bonds. Another major issue addressed by the North Dakota Transmission Authority has been the treatment by the Minnesota Public Utilities Commission of North Dakota coal energy. The authority has been monitoring and providing comment to the commission and legislative leaders in Minnesota.

NORTH DAKOTA PIPELINE AUTHORITY REPORT

The committee received a biennial report from the North Dakota Pipeline Authority on its activities. The committee received updates as to the authority's activities throughout the interim and received the *North Dakota Pipeline Authority Annual Report April 11, 2007-June 30, 2008.* The committee was informed that North Dakota Port Services near Minot has begun to accept crude shipments at an initial capacity of 30,000 barrels a day for shipment by railcar. There is a capacity of 25,000 barrels a day for oil to move by pipeline into Minot but not out of Minot. The capacity may be used by Port Services to reduce truck traffic. The rail transportation from Minot should meet the production of crude oil until the Enbridge Phase VI expansion is completed in 2010. Even after the 2010 expansion, the railcar transport will be needed or there will need to be a new pipeline. Transporting oil by rail costs more than by pipeline, and if there is enough oil, the economics dictate that a pipeline be built.

The committee received information on the Enbridge Pipeline. The Phase VI project is an update of pump facilities. This phase will reach the maximum capacity for the pipeline and increase export capacity by 51,600 barrels per day.

The committee received information on natural gas pipelines. The committee was informed that there is export capacity on the Northern Border Pipeline for natural gas. Generally, there needs to be processing of natural gas before it may be placed in a pipeline. One exception is the Alliance Pipeline that transports unprocessed gas to Chicago for processing.

DEPARTMENT OF COMMERCE'S ENERGY POLICY COMMITTEE REPORT

The Energy Policy Commission met jointly with the Energy Development and Transmission Committee to review the work of the Energy Policy Commission. The Energy Policy Commission presented a final report containing 21 goals, 40 policy recommendations, and 98 action points. The Energy Policy Commission was unanimous in its findings, and of the 98 action points, 8 were for state legislative action for which legislative proposals were drafted. These action points were categorized as Category 1. Category 2 action points were intended to be addressed between the issuance of the report and the end of the legislative session. Category 3 action points were intended to be addressed after the legislative session, some through legislatively sanctioned studies.

The Energy Development and Transmission Committee focused on these eight Category 1 action points:

- Extend the 1.5 percent reduction of taxable value for wind generating units until 2015.
- Make permanent the sales and use tax exemption for building materials, production equipment, and other tangible personal property used in the construction of a wind tower facility.
- Extend the 15 percent investment tax credit on the cost associated with installing a wind, biomass, geothermal, or solar energy device until 2015 and extend the income tax credit carryforward from 5 years to 10 years.
- Make permanent the tertiary extraction tax exemption on all projects using carbon dioxide for enhanced oil recovery.
- Amend the current coal severance tax exemption to include beneficiated coal that ultimately is used in North Dakota agricultural commodity processing facilities and amend the definition of coal to address changes in the uses of coal.
- Address tax issues for repowering generation facilities due to new environmental changes and

amend the definition of coal to address changes in the uses of coal.

- Create a state energy building code.
- Clarify the sales tax exemption created in House Bill No. 1462 (2007) to include gas gathering systems from oil wells.

The Energy Policy Commission also reported on other action points under the topics of wind, transmission, lignite, ethanol, biodiesel, biomass, energy efficiency, refining, oil and gas, natural gas processing and petroleum marketing, infrastructure, workforce, and solar, geothermal, hydrogen, and hydro power. Each topic in the report listed the opportunities, challenges, goals, and policy recommendations. As for wind, the Energy Policy Commission urged that boundary issues and property owner's rights in relation to wind towers and wind wakes be addressed. The Energy Policy Commission also urged that there should be a wind taxation study to find a new method of taxing wind farms so that each wind farm would be taxed the same. South Dakota has recently changed from a property tax system to a production tax and Minnesota does not use a property tax.

As for oil and gas, the Energy Policy Commission suggested that a flatter extraction tax structure would make budgeting and planning easier for both the industry and the state. The present rates range from 5 percent to 11.5 percent and a range from 7 percent to 9.5 percent was proposed.

EMERGENCY SERVICES COMMUNICATIONS COORDINATING COMMITTEE REPORT

The committee received the report from the Emergency Services Communications Coordinating Committee on the uses of assessed communications services fee revenue and recommended changes to the operating standards for emergency services communications. The committee was informed that some counties are saving for the future while negatively spending to operate a public safety answering point. The committee was informed that there are a number of duplications in technology around the state--one reverse 911 system could handle the whole state. In addition, the computer-aided dispatch system in Fargo could be the backbone for the entire state. Committee discussion noted that there is no incentive for the sharing of technology and there is local resistance to sharing which results in duplication. It was argued that there is no reason for saving for shared equipment. The committee was informed that there was some sharing and there are technological problems crossing the local access transport line.

HIGHER EDUCATION COMMITTEE

The Higher Education Committee was assigned the following responsibilities:

1. Section 23 of House Bill No. 1003 (2007) directed a study of the means by which the North Dakota University System can contribute to developing and attracting the human capital to meet North Dakota's economic and workforce needs, including ways to increase postsecondary access, improve the quality of education, contain costs, and other means, including productivity, to maximize the usage of the University System in meeting the human capital needs of the state. The study was to include a review of policy recommendations that address the postsecondary delivery system, including the mix of institutions, educational attainment gaps, degree production gaps, recruitment and retention of students, and workforce training needs. The study was also to review the impact of the state's changing demographics on the University System's long-term financing plan.
2. Section 14 of Senate Bill No. 2013 (2007) directed a study of the provision of services to children and adults who are deaf or hearing-impaired, including the role of the North Dakota School for the Deaf in the provision of educational rehabilitative services, the short-term and long-term viability of existing state facilities, and alternative approaches that might enhance the scope and breadth of service availability.
3. Section 23 of House Bill No. 1018 (2007) provided that the Legislative Council receive a report from the State Board of Higher Education regarding the status of the implementation of services from CCbenefits, Inc.

Committee members were Representatives Ken Svedjan (Chairman), Lois Delmore, Kathy Hawken, RaeAnn G. Kelsch, Matthew M. Klein, Bob Martinson, Jasper Schneider, Bob Skarphol, John D. Wall, and Clark Williams and Senators Ray Holmberg, Karen K. Krebsbach, Elroy N. Lindaas, Dave Nething, Dave Oehlke, Tracy Potter, and Larry J. Robinson.

The committee submitted this report to the Legislative Council at the biennial meeting of the Council in November 2008. The Council accepted the report for submission to the 61st Legislative Assembly.

BACKGROUND

The University System consists of 11 institutions under the control of the State Board of Higher Education and served approximately 59,387 students (headcount enrollment) during the 2006-07 academic year. Total appropriations provided by the 2007 Legislative Assembly for higher education institutions, including the University System office, totaled $634,069,325, of which $468,649,624 was from the general fund, including block grant appropriations to each of the higher education institutions for operations and capital assets and $165,419,701 from special funds, including $159,134,435 for capital projects.

The legislative appropriations for the 11 institutions, the University System office, and the North Dakota Forest Service include funding for 2,136.59 full-time equivalent (FTE) general fund positions for the 2007-09 biennium. Pursuant to North Dakota Century Code (NDCC) Section 15-10-12, tuition and fees are not specifically appropriated by the Legislative Assembly as statutory authority is provided for the continuing appropriation of these funds.

PREVIOUS LEGISLATIVE HIGHER EDUCATION STUDIES AND RELATED LEGISLATION

Since 1999 the Legislative Council has established a Higher Education Committee each interim. These committees have reviewed higher education funding, expectations of the University System, and accountability and reporting measures for the University System. The committees have gathered input through the use of the Higher Education Roundtable, which consists of members of the Higher Education Committee and representatives from the State Board of Higher Education, business and industry, the executive branch, and higher education institutions, including tribal and private colleges. The Higher Education Roundtable process consists of small discussion groups, which are used to provide recommendations to the entire roundtable. The table below summarizes the meeting dates of the Higher Education Roundtable from the 1999-2000 interim through the 2005-06 interim:

Interim	Meeting Dates
1999-2000	September 28-29, 1999 (Jamestown) October 29, 1999 (Carrington) April 19, 2000 (Rugby)
2001-02	July 18, 2001 (Mandan) June 12, 2002 (Bismarck)
2003-04	October 21, 2003 (Bismarck) June 15, 2004 (Bismarck)
2005-06	February 15, 2006 (Bismarck)

For each interim since 1999-2000, the Higher Education Committee has recommended a number of bills for consideration by the Legislative Assembly. The bills approved by each Legislative Assembly have included the following provisions:

1. Provide continuing appropriation authority for higher education institutions' special revenue funds, including tuition, through the end of the next biennium.
2. Require the budget request for the University System to include budget estimates for block grants for a base funding component and for an initiative funding component and a budget estimate for an asset funding component, and require the appropriation for the University System to include block grants for a base funding appropriation and for an initiative funding

appropriation and an appropriation for asset funding through the end of the next biennium.

3. Authorize the University System to continue or carry over at the end of the biennium unspent general fund appropriations through the end of the next biennium.

In addition to the recommended bills, several interim Higher Education Committees have recommended performance and accountability measures for the University System performance and accountability report required pursuant to NDCC Section 15-10-14.2.

HIGHER EDUCATION STUDY

Section 23 of House Bill No. 1003 (2007) directed a study of the higher education system. To assist in the study, the committee retained the consulting services of Mr. Dennis Jones, President, National Center for Higher Education Management Systems, to review higher education policy areas. As part of the study, the committee:

- Convened a higher education policy summit on September 26-27, 2007, which consisted of Higher Education Committee members and representatives of the State Board of Higher Education, the University System office, the University System higher education institutions, private and tribal colleges, state government, and the private sector.
- Held a joint meeting with the interim Workforce and Education Committees on June 24, 2008. The joint meeting was to allow each of the committees to share activities being conducted as they relate to the development of the state's workforce.
- Convened the Higher Education Roundtable, consisting of the 17 members of the Higher Education Committee and 50 representatives from the State Board of Higher Education, business and industry, higher education institutions, and the executive branch, on October 8, 2008, to discuss higher education in North Dakota and recommendations for action by the Legislative Assembly, the University System, the executive branch, and the private sector.

Committee Findings

The committee conducted a review of major higher education policy areas. The following is a description of committee findings in each of the policy areas:

Education Attainment

Major findings relating to education attainment in North Dakota include:

- North Dakota is close to the national average for the percentage of adults aged 25 to 64 with a bachelor's degree.
- North Dakota ranks high in the percentage of adults with a high school diploma and an associate's degree, but the state ranks low in the percentage of adults with a bachelor's degree or higher. The following is a summary of North Dakota's education attainment, including national ranking:

North Dakota's Education Attainment (Adults Aged 25 to 64)	Percentage	National Ranking
High school diploma	94.1%	1st
Associate's degree	13.2%	1st
Bachelor's degree	29.2%	19th
Graduate or professional degree	7.6%	43rd

- The following is a summary of the percentage of adults with an associate's degree or higher by age group for North Dakota, the United States, and other leading countries:

	Adults Aged 25 to 34	Adults Aged 35 to 44	Adults Aged 45 to 54	Adults Aged 55 to 64
North Dakota	47.3%	43.1%	43.0%	33.8%
United States	39.0%	39.4%	40.7%	36.2%
Canada	53.3%	47.0%	41.4%	34.5%
Japan	51.6%	45.1%	32.7%	19.2%
Korea	49.1%	33.5%	16.4%	9.7%
Sweden	42.3%	35.7%	32.9%	27.3%
Belgium	40.7%	35.7%	32.9%	27.3%
Ireland	40.4%	28.9%	21.5%	23.2%
Norway	39.2%	34.1%	29.4%	23.2%

- The percentage of North Dakota's population aged 18 to 24 without a high school diploma is 11.9 percent, less than the national average of 19.6 percent.
- The number of high school graduates in North Dakota is projected to decrease from 8,931 in 2000-01 to 5,552 in 2017-18.
- North Dakota's three-year graduation rate at two-year colleges is 34.1 percent, exceeding the national average of 29.3 percent.
- North Dakota's six-year graduation rate at four-year colleges is 49.4 percent, less than the national average of 55.8 percent.
- North Dakota's difference in median earnings between a high school diploma and a bachelor's degree is $10,192, one-half of the national average difference of $20,384.

Student Preparation

The committee received information regarding activities designed to prepare students for college. The committee learned the following regarding student preparation:

- The State Board of Public School Education, State Board of Higher Education, Education Standards and Practices Board, and State Board for Career and Technical Education are working to align high school curriculums with college entrance requirements. The boards have considered implementing the American College Test (ACT) Educational Planning and Assessment System to assess student achievement in grades 8, 10, and 12.
- The state may consider participating in the American Diploma Project Network--a coalition of 30 states dedicated to aligning kindergarten through grade 12 curriculum, standards,

assessments, and accountability policies with the demands of higher education and the workforce. The network states will:

Align high school standards and assessments with the knowledge and skills required for success after high school.

Require all high school graduates to take challenging courses that actually prepare them for life after high school.

Streamline the assessment system so that the tests students take in high school also can serve as readiness tests for college and work.

Hold high schools accountable for graduating students who are not ready for college or careers and hold higher education institutions accountable for students' success once enrolled.

- The University System established Project Vital Link in November 2002 to attract more high school students to University System higher education institutions. Under the project, campus recruitment efforts are supplemented by mailing information about the University System, including admission requirements, directly to high school students at their homes and by providing other information to students through their middle school and high school counselors.
- Policies of the State Board of Higher Education require all students to complete the ACT or the Scholastic Aptitude Test prior to attending a state higher education institution. In addition, some institutions use additional tests for the placement of students in higher education courses.
- Concern was expressed by committee members regarding the number of assessments being utilized. Discussion indicated it may be beneficial to review the assessments currently in use and develop policies to standardize the assessments.

Student Retention and Completion

Major committee findings relating to student retention and completion include:

- For every 100 ninth grade students in North Dakota:

  83 students graduate from high school four years later.

  57 students immediately enter college.

  41 students are still enrolled in their second year of college.

  25 students graduate with either an associate's degree within three years or a bachelor's degree within six years.
- The 2007 Legislative Assembly established a Statewide Longitudinal Data System Committee responsible for developing a proposal and budget for a statewide longitudinal data system to monitor students from kindergarten through grade 12 to higher education and to the workforce.
- The State College of Science is in the process of implementing a program to assist students who are not accepted into North Dakota State University. Under the program, students not accepted into North Dakota State University may enroll into the State College of Science and be provided a plan to enable the student to reapply for admission into the university.
- Higher education statistics, including those for student retention and completion, may be impacted by higher education institutions in other states. Out-of-state institutions located near the state border may attract existing North Dakota students.
- Student completion may be influenced by employers placing a value on education. Student motivation for completion is related to the financial benefits of completing an education.

Affordability

The committee received information regarding the affordability of University System institutions. Major committee findings include:

- Tuition and fees for the 2005-06 school year at the University of North Dakota, North Dakota State University, and Minot State University were less than their regional counterparts. The average rates at the other University System four-year institutions were about the same as their regional counterparts, and the average two-year college rate was more than the regional average.
- Possible strategies to improve higher education affordability include:

  Ensuring predictable state appropriations.

  Ensuring financial aid dollars are targeting the students with financial need.

  Ensuring predictable tuition and fee increases.
- Students have access to federal financial aid resources, including federal Pell grants, federal Perkins loans, federal subsidized Stafford loans, and workstudy programs. State financial aid programs include the state grant program, scholars program, and Native American scholarship program. North Dakota ranks low compared to other states in the amount of state financial aid provided to students.
- Student debt may not consider costs associated with student lifestyle. In addition, many students do not earn their degree in the normal program schedule. The committee learned it may be more appropriate to measure the cost to attend college rather than the amount of debt a student accumulates while attaining a college education.

Accessibility

The committee learned accessibility of higher education is affected by geography. Some institutions enroll most of their students from areas located near their campus while other institutions attract students from all areas of the state. Attention needs to be placed on reviewing the geographic access of institutions as

well as the array of programs available at each institution. An educational system should provide programs in the locations where they are in demand.

The state needs to determine how dependent it should be on other states for educational programs. Reciprocity agreements with other states may be more efficient for providing educational opportunities instead of the state creating additional programs. It may be more cost-effective to offer programs at additional locations by utilizing technology. Efficiency may be realized by having one large class instead of several smaller classes.

Contribution to Economic Development and Workforce Needs

The committee received information regarding the use of higher education in meeting the economic development and workforce needs of the state. Major committee findings include:

- Higher education is a significant part of economic development.
- The University System should produce graduates who are educated to meet the needs of the state's economy.
- The University System should be responsive to the training needs of the state's employers.
- The research conducted at the state's universities can be used to contribute to the expansion and diversification of the state's economy.
- In order to prevent the outmigration of recent graduates, the state needs to have jobs available.
- The North Dakota Talent Initiative is being used to develop a comprehensive plan for workforce training. Goals of the initiative include increasing the quantity and quality of the workforce and reducing unemployment rates in areas that are above the state average.
- Suggestions received to improve economic development and workforce conditions include:

  Link education and jobs to attract and retain a workforce.

  Ensure high school students have an appropriate education when entering college.

  Use assessment tests to determine the workforce readiness of workers.

  Use incentives for students to encourage them to seek employment in the state.

  Provide more information to high school students regarding careers available in the state.

  Review the ability of state higher education institutions to recruit students from out of state.

  Recognize the importance of lifelong learning and adult education as components of workforce issues.

  Provide for flexibility in higher education funding to allow for immediate responses to workforce needs.

Effectiveness and Efficiency

The committee received information regarding the University System of Maryland's Effectiveness and Efficiency Initiative. The committee learned the University System of Maryland experienced unprecedented challenges during the 2003-04 academic year, including declining state aid, increasing enrollment demands, and increasing demands from the private sector. As a result, the University System of Maryland developed and launched an Effectiveness and Efficiency Initiative in the fall of 2004 to achieve savings for redirection to the system's highest priorities, including preserving and building the quality of system institutions, addressing enrollment demands, enhancing the academic opportunities and services available to students, and moderating tuition increases.

The first phase of the Effectiveness and Efficiency Initiative included the following action items to build capacity to address increasing enrollment demands and to reduce costs and fund quality:

Action Items to Build Capacity to Address Increasing Enrollment Demands	Action Items to Reduce Costs and Fund Quality
Increase faculty workload across the system by 10 percent	Centralize "shared services," such as audit, construction management, and real estate development
Limit the time to degree for most educational programs to 120 credits	Leverage the system's buying power for major commodities to drive down prices
Require students to complete 12 credits outside the traditional classroom experience, including online courses and out-of-classroom learning	Streamline student services functions to eliminate unnecessary duplication
Maximize the utilization of the system's comprehensive institutions	Review the organizational structure of special purpose institutions

The first phase of the Effectiveness and Efficiency Initiative resulted in mitigated tuition increases for fiscal year 2005 and flat tuition rates for fiscal years 2006 through 2008. The University System of Maryland has experienced $60 million in cost-savings relating to the first phase of the initiative in fiscal years 2005 through 2008.

The committee received information regarding North Dakota University System institutions' initiatives for faculty efficiency and effectiveness. The committee learned about faculty initiatives relating to workloads, evaluations, benchmarks, and activities.

System Functioning and Governance

The committee reviewed the process used to select nominations for the State Board of Higher Education. The committee learned that Article VIII, Section 6, of the Constitution of North Dakota provides that the committee to select nominations for the State Board of Higher Education consists of the president of the North Dakota Education Association, the Chief Justice of the Supreme Court, the Superintendent of Public Instruction, the President Pro Tempore of the Senate, and the Speaker of the House of Representatives. The committee, with

approval of four of the five members, forwards three names to the Governor for the selection of a nomination. All selections by the Governor are subject to the consent of a majority of the members-elect of the Senate. In the event any nomination made by the Governor is not consented to and confirmed by the Senate, the Governor shall again nominate a candidate selected from a new list. The nomination shall be submitted to the Senate for confirmation and the proceedings shall continue until an appointee has been confirmed by the Senate or the session of the Legislative Assembly has adjourned. If a term expires or a vacancy occurs when the Legislative Assembly is not in session, the Governor may appoint a member from a list selected as provided who shall serve until the opening of the next session of the Legislative Assembly at which time the appointment must be certified to the Senate for confirmation. If the appointee is not confirmed by the 30th legislative day of the session, the office shall be deemed vacant and the Governor shall nominate another candidate for the office. If the Legislative Assembly is in session at any time within six months prior to the date of the expiration of the term of any member, the Governor shall nominate a successor from the selected list within the first 30 days of the session. Upon confirmation by the Senate, the successor shall take office at the expiration of the incumbent's term. No person who has been nominated and whose nomination the Senate has failed to confirm is eligible for an interim appointment.

The committee learned that, in general, a legislative body is prohibited from imposing additional qualifications upon positions that have qualifications established by the constitution.

The committee received information regarding the roles, responsibilities, and orientation of the State Board of Higher Education. The committee learned that a 2006 State Board of Higher Education task force reviewed the governance of the University System. The task force determined there were no changes needed to the current higher education structure. The committee learned new members of the board are provided an orientation session in the University System office that involves a review of board structure, demographics, finance, workforce issues, mission, academic affairs, and student affairs. Board members also have the opportunity to attend conferences for professional development.

Higher Education Roundtable

Higher Education Roundtable Task Forces

The Higher Education Roundtable convened four task forces to develop recommendations in the key areas of education attainment, accessibility, contribution to economic development, and workforce needs. Each task force was chaired by a member of the Legislative Assembly and reviewed two of the four key areas.

The discussion groups developed by consensus the following recommendations in the key higher education areas:

Task Force	Recommendations
Education attainment	Market degrees that take less than four years to complete
	Focus on the American Indian subpopulation
	Prepare students for success by providing tools to assess colleges, programs, and careers that are the best fit for their skills and abilities
	Expand career advising to send students to college "with a purpose" and develop programs to assist freshmen with undecided majors
	Show how majors can relate to occupational needs (e.g., an art student learning about graphic design)
	Teach money management in high schools
	Use higher education as a coach to assist students to prepare for success
	Use higher education to provide feedback to high schools (This could be a role for the statewide longitudinal data system.)
	Develop a graduation standard for high school
	Educate the working age population to the level of the best in the world and consider salary levels paid in the state
	Focus efforts at the associate's degree or certificate level to meet state needs (This level also moves students onto the economic "onramp" and prepares them for higher levels of education.)
	Focus on the American Indian population as a major growth segment that will be the state's future workforce
	Address the needs of the adult population when developing higher education delivery systems
	Implement systematic P-20 career counseling in North Dakota
Accessibility	Develop higher education centers
	Make higher education affordable for all economic backgrounds
	Use lifelong learning to promote access to all demographics
	Expand online education opportunities, which are important, especially for place-bound students, adults, and other populations
	Create awareness about opportunities--colleges, programs, and jobs--available in the state
	Market and communicate with nontraditional students and to targeted geographical areas
	Monitor the availability of programs and courses to ensure they are available at the times and places they are needed

Task Force	Recommendations
	Ensure policies and infrastructure are in place to serve older-than-average and other nontraditional students
	Continue creative delivery, partnerships, and collaborations
	Ensure appropriate financial aid is available
	Encourage employer partnerships with higher education for the training and development of employees
	Continue to upgrade infrastructure such as the Internet and the Northern Tier Network
	Provide an opportunity to allow anyone who wants to go to college the ability to be prepared and have the opportunity to attend college
	Consider addressing accessibility barriers such as economic and financial (e.g., time commitments, job duties, and family responsibilities) and psychological (e.g., leaving home for the first time, lack of encouragement and advisement, coming from a small school to a larger school, the stigma of going to a community college, etc.)
	Make access financially affordable, especially for online education (The online education cost should not be higher than on-campus courses.)
	Maintain affordability, particularly at community colleges which are low-cost access points
	Review higher education funding to support online costs as well as on-campus costs
	Maintain efficient pathways between degrees and support partnerships and collaboration which improve statewide access
Contribution to economic development	Raise the skill level of North Dakota's workforce to the highest level
	Focus resources to build workforce skills that meet the economic development needs of the state
	Provide higher education classes in the workplace
	Offer shorter term programs
	Expand workforce recruitment efforts to address economic development needs
	Provide career and vocational advising in high schools, including: • Identify career projections for the next five years • Inform students of skills needed to fill jobs • Assess students' interests and skills using programs such as WorkKeys • Keep students' goals as a priority
	Offer higher level classes in high school
	Expand university internships with North Dakota businesses
	Further develop opportunities involving centers of excellence
	Enhance entrepreneurship opportunities
	Develop the ability to immediately respond to workforce needs with new programs and provide financial resources
	Conduct regular meetings between the University System and the private sector
	Provide tax breaks and opportunities to encourage recent college graduates to remain in the state
	Continue the excitement of the research currently being conducted through programs such as the centers of excellence and the Experimental Program to Stimulate Competitive Research
	Research the feasibility of a tax deduction being used as an incentive for businesses to work with universities
Workforce needs	Develop the ability for higher education to respond rapidly to workforce needs and adjust resource allocations
	Allow higher education to continue a relationship with private industry, especially targeted industries
	Work with businesses to develop curriculum and programs to meet future workforce needs
	Be responsive to workforce needs
	Expand internships in partnership with North Dakota businesses
	Provide employer feedback to higher education on the skill levels of interns and graduates
	Provide an office at each university that allows businesses to communicate directly with the university
	Provide more distance education to meet business needs across the state
	Provide incentives for students or universities to meet selected workforce needs

Further Actions Needed

The Higher Education Roundtable received the following action items for the Legislative Assembly, State Board of Higher Education, and private sector from Mr. Jones based on the task force discussions:

Stakeholder	Roundtable Assignments
Private sector	Continue the discussion of job preparedness assessments Provide opportunities for student internships Assess college graduate preparedness to determine institution program strength
State Board of Higher Education	Define common expectations of student preparedness for college Review the missions and roles of institutions to determine the most effective way to serve the state Review higher education finance policy
Legislative Assembly	Define the expectations of the University System through accountability measures Create expectations for a longitudinal database and provide resources for its development

Higher Education Finance

The committee learned that the Constitution of North Dakota allows the University System to submit a budget based on the needs of institutions under its control. The State Board of Higher Education has the final authority over what is included in the budget request. Pursuant to NDCC Sections 54-44.1-04 and 54-44.1-06, budget requests and appropriations of the University System must be in a block grant format.

The committee learned that the current long-term finance plan of the University System compares funding levels of University System institutions to similar institutions nationwide, or peer institutions. The plan has components for base operating funds, capital assets funds, and incentive funds. A peer comparison funding method is to provide an objective measurement of the appropriate level of funding for an institution.

Base Funding

The committee reviewed options for indexes that may be used in calculating increases in base funding for higher education. The committee learned the consumer price index is based on prices paid for food, clothing, shelter, transportation, and other goods and services that people buy for day-to-day living. The higher education price index measures the effects of inflation on the current operations of higher education institutions. A majority of higher education costs are salaries and wages, utilities, and technology. The higher education cost adjustment calculation is a method of identifying the cost increases incurred by higher education institutions similar to the consumer price index and previous indicators used for determining higher education funding increases.

Proposed Finance Model

The committee reviewed a proposed finance model for higher education developed by Mr. Jones. Criteria for the proposed model include sustaining the viability of all University System institutions, enhancing the collaboration and transparency of decisionmaking, and reinforcing the system of institutions. The model consists of five separate components--base funding, investment funding, noncapital asset maintenance funding, incentive funding, and capital asset maintenance funding.

The **base funding component** would identify the level of funding for ongoing expenses and may include annual increases based on the higher education cost adjustment calculation. The state share of base funding may vary depending on the type of institution, and special reviews of base funding may be needed for smaller institutions.

The following table outlines the percentage of state funds used for base funding increases:

Institution Type	Percentage of Base Funding Increases Provided From the General Fund
Research	60%
Comprehensive	65%
Four-year	70%
Two-year	75%

The **investment funding component** would identify the level of funding for the creation of new educational programs, including online programs, learning centers, and additional student services capacity. Two-year programs could also be offered at four-year institutions. Proposed initiatives for investment funding would be prioritized by the University System and approved individually by the Legislative Assembly. Once an investment funding proposal is approved, the amount would be included in the base funding amount for the institution. The Higher Education Roundtable could be used to discuss proposed initiatives prior to the University System submitting its budget request.

The **noncapital asset maintenance component** would identify the level of funding to maintain the noncapital assets of an institution. Noncapital asset maintenance funding would give campuses the ability to retain highly qualified faculty. Approaches to maintaining noncapital assets include peer-based equity funding and a competitiveness pool. Funds received by an institution from a competitiveness pool would become part of its base funding amount.

The **incentive funding component** would be used to reward institutions that accomplish state priorities. A separate pool of funds would be available and distributed to institutions that achieve specified goals or criteria. Incentive funding would not become part of an institution's future base funding.

The **capital asset maintenance funding component** would identify the level of funding for deferred maintenance on campuses. A formula would be developed to distribute the funds, and institutions would report annually on the use of funds provided for maintenance purposes.

The table below summarizes each of the components of the proposed finance model and the suggested percentage adjustment or calculation level of funding for each as proposed by Mr. Jones:

Funding Component	Description	Suggested Funding Level Adjustment/ Calculation
Increase in base funding	Prior year base funding increased by the higher education cost adjustment index. Both general fund and tuition revenue are used to provide funds for base funding increases.	3.34%
Investment funding	Funding based on a percentage of state appropriations for higher education. Once an investment funding item is approved, the funding becomes part of the institution's base funding calculation.	2%
Maintenance of noncapital assets	Funding based on a percentage of the prior year full-time faculty and staff salaries. Once funding is allocated, it becomes part of the institution's base funding calculation.	2%
Incentive funding	Funding based on a percentage of state appropriations for higher education. Funds do not become part of an institution's base funding calculation.	2%
Capital asset depreciation funding	Based on a percentage of the total replacement cost of capital assets. Funds do not become part of an institution's base funding calculation.	2%

The committee learned the proposed finance model would provide higher education institutions with an estimated general fund base funding increase of 17 percent for the 2009-11 biennium. However, the base funding amount provided under the proposed finance model would be less than the University System's 2009-11 base funding budget request. The University System's 2009-11 budget request includes $465 million of institution base funding, which is a 24.6 percent increase from the 2007-09 biennium appropriation. Estimated general fund base funding increases associated with the proposed finance model are as follows:

Biennium	Increase in General Fund Base Funding From the Previous Biennium	Percentage Change in General Fund Base Funding From the Previous Biennium
2009-11	$61,674,795	17%
2011-13	$82,097,829	19%
2013-15	$92,976,529	18%
2015-17	$105,182,510	17%

The committee received information from the University System regarding the proposed finance model. The committee learned that the University System does not believe the proposed finance model, based on the funding adjustments and calculations suggested by Mr. Jones, will provide the University System with adequate funding to meet the higher education needs of North Dakota.

Performance and Accountability Report

North Dakota Century Code Section 15-10-14.2 requires the University System to provide an annual performance and accountability report regarding performance and progress toward the goals outlined in the University System strategic plan and related accountability measures. Section 17 of House Bill No. 1003 (2007) provides that the performance and accountability report required by Section 15-10-14.2 include an executive summary and identify progress made on specific performance and accountability measures in the areas of education excellence, economic development, student access, student affordability, and financial operations.

The committee received the University System's *2006 Accountability Measures Report*. The performance and accountability measures and related findings are:

Accountability Measures	Status - Findings
Economic Development Connection Enrollment in entrepreneurship courses and the number of graduates of entrepreneurship programs	University System institutions offer 44 entrepreneurship courses and 3 entrepreneurship programs. In the past year, 890 students enrolled in entrepreneurship courses and 9 students graduated from entrepreneurship programs. An additional 830 participants attended workshops that had an entrepreneurial focus.
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 full time find employment related to their education or training.
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 250 percent between fiscal years 2000 and 2005. The number decreased between fiscal years 2005 and 2006 as a result of completing a major training contract involving several hundred businesses in fiscal year 2005. The number of employees trained increased in the past year.
Research expenditures in proportion to the amount of revenue generated by research activity and funding received for research activity	Research grew by 48 percent during the past four years with $110.6 million in research expenditures in fiscal year 2006. Research expenditures comprised 15.1 percent of total University System expenditures in fiscal year 2006 compared to 13 percent in fiscal year 2002.
Levels of satisfaction with workforce training events as reflected in information systematically gathered from employers and employees receiving training	Businesses reported a 99.2 percent average workforce training satisfaction level for fiscal year 2006. Employees reported a satisfaction level of 98.7 percent during the same period.

Accountability Measures	Status - Findings
Education Excellence Student graduation and retention rates	Based on Integrated Postsecondary Education Data System (IPEDS)-reported graduation rates, 34.8 percent of students who attended University System two-year institutions completed degrees within three years and 49.1 percent of students who attended four-year institutions completed degrees within six years compared to the national rates of 29.3 percent and 55.8 percent, respectively.
Students' performance on nationally recognized examinations in their fields compared to the national averages	University System students met or exceeded the national average on most nationally recognized examinations for fiscal year 2006.
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 2006.
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 2001 and June 2003, 71.7 percent reported their current jobs were "highly related" to or "moderately related" to the most recent degrees they earned and 80.4 percent reported the institution they attended prepared them at least adequately for their current jobs. Based on the results of a student satisfaction inventory conducted in the spring of 2006, University System students were generally "satisfied" with their college experience.
Employer-reported satisfaction with preparation of recently hired graduates	Based on the results of an employer satisfaction survey conducted in the summer of 2006, employers were on average "very satisfied" with employees' skills and knowledge.
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 the fall 2005, spring 2006, and fall 2006 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 and the institution meeting the defined needs and goals as expressed by students	At two-year institutions, 58.7 percent of students indicated the intent to earn a two-year degree and 34.8 percent completed two-year degrees within three years. At four-year institutions, 61.6 percent indicated the intent to earn four-year degrees while 49.2 percent completed four-year degrees within six years.
Flexible and Responsive System Levels of satisfaction with responsiveness as reflected through responses to evaluations of companies receiving training	In fiscal year 2006, companies reported a 99.7 percent satisfaction level with the responsiveness of the workforce training system in North Dakota.
Biennial report on employee satisfaction relating to the University System and local institutions	Based on an employee survey conducted in 2006, 76 percent of University System employees said they were "satisfied" or "very satisfied" with their employment.
Accessible System Number and proportion of enrollments in courses offered by nontraditional methods	During the fall of 2006, the University System served 13,200 students who enrolled in courses for credit through nontraditional delivery methods. These students comprise 31 percent of the system's total headcount enrollment. Enrollment by students who take courses in a variety of nontraditional delivery methods has increased 217 percent since the fall of 2001.
Tuition and fees on a per student basis compared to the regional average	Tuition and fees at the University of North Dakota, North Dakota State University, and Minot State University were less than their regional counterparts. The average rates at the other University System four-year institutions were about the same as their regional counterparts, and the average two-year college rate was more than the regional average.
Tuition and fees as a percentage of median North Dakota household income	Tuition and fees at University System institutions for the 2005-06 school year, as a proportion of median household income, were slightly higher than the regional average with the greatest difference occurring at two-year colleges.
Student enrollment information, 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 enrollment was 42,237 for the fall of 2006.
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 age 25 and older are enrolling at University System institutions. The number of students who are enrolled in graduate and professional programs has increased 23.7 percent since the fall of 2002.

Accountability Measures	Status - Findings
Funding and Rewards Ratio measuring the amount of expendable net assets as compared to the amount of long-term debt	The University System had a ratio of net assets available for debt service to long-term debt of 0.5 to 1 as of the end of fiscal year 2006. A ratio of 1 to 1 or greater is desired.
Cost per student in terms of general fund appropriations and total University System funding	In fiscal year 2002, funding from the general fund comprised approximately 32 percent of the total revenues for the University System. In fiscal year 2006, funding from the general fund comprised approximately 26 percent of the total revenues for the University System.
Cost per student and percentage distribution by major function	In fiscal year 2006, the University System spent $17,320 per student from all funding sources, an increase of 17.6 percent since fiscal year 2002.
Per capita general fund appropriations for higher education	In the 2003-05 biennium, per capita state general fund revenue for higher education was $590.
State general fund appropriation levels for University System institutions compared to peer institutions' general fund appropriation levels	Based on 2005-07 state funding levels, all University System institutions are funded at less than 100 percent of their peer institutions' benchmarks and most are funded at less than 85 percent of their peer institutions' benchmarks. The institutions, as a whole, are funded at an average of 51 percent of their peer institutions' benchmarks.
Ratio measuring the funding derived from operating and contributed income compared to total University System funding	In fiscal year 2006, the University System generated 74 percent of its total revenues either internally for services or externally from gifts, grants, and contracts.
Ratio measuring the amount of expendable fund balances divided by total expenditures and mandatory transfers	The University System had a primary reserve ratio of 0.3 to 1 as of the end of fiscal year 2006, which indicates it could continue operations for about 14 weeks.
Ratio measuring net total revenues divided by total current revenues	The University System had a net income margin of 3.7 percent as of the end of fiscal year 2006, which indicates the system was not spending more than it was taking in.
A status report on higher education funding as compared to the long-term financing plan	Based on data for fiscal year 2006, all institutions are funded at less than their operating benchmarks per FTE student. All institutions exceed their student-share target. University System institutions are funded at an average of 13.4 percent of the Office of Management and Budget capital assets formula and at 4.2 percent of total capital funding needs, including outstanding deferred maintenance.
Ratio of incentive funding to total University System state general fund appropriations	The state funded .49 percent of the total University System appropriation for incentive funding for the 2005-07 biennium compared to the long-term financing plan goal of 2 percent.
Ratio of University System state general fund appropriations to total state general fund appropriations	The University System's share of the 2005-07 total state appropriation was 19.5 percent, a decrease from 21 percent in the 2001-03 biennium.

Other Information Received

The committee received information regarding the recent National Conference of State Legislatures Blue Ribbon Commission on Higher Education report entitled *Transforming Higher Education: National Imperative - State Responsibility* relating to the framework for transforming higher education and implementing reform. The committee learned the report calls upon legislators to seize the opportunity to lead the higher education reform movement in the states by prioritizing higher education on the legislative agenda, approaching fiscal and policy decisions in a different way, and exerting strong leadership.

The committee received information regarding the National Governors Association report entitled *A Compact for Postsecondary Education* relating to the need to transform higher education in order to ensure an effective workforce for the 21st century. The committee learned while the current United States postsecondary system is widely admired, the system that has flourished historically may not be the one for the 21st century. As the world economy becomes more global, more technology-driven, and more knowledge-based, more is being asked of our postsecondary education system.

The committee learned the National Governors Association report introduces a new vehicle for aligning postsecondary education to state economies--a postsecondary education compact. Through the compact, state governments, the postsecondary education system, the board of regents, and the private sector collaboratively embrace a public agenda to ensure that postsecondary education policies, programs, curricula, and resources address current, emerging, and future economic realities. The following steps are critical in developing a compact:

1. Determine the economic needs of the state.
2. Understand the state postsecondary education system.
3. Establish high-quality data systems.
4. Work with stakeholder groups.

The committee received information from the North Dakota Student Association and the TRIO Programs. The committee learned the North Dakota Student Association is composed of student leaders from across the state that meets to discuss issues impacting higher education. The TRIO Programs are used to increase the retention and completion rates of disadvantaged students.

The committee received information regarding the workforce needs of nursing. The committee learned there is currently a minor shortage of registered nurses in the state. However, the supply of registered nurses is expected to meet demand in 2009. The future supply of nurses is expected to increase due to larger enrollments in nursing education programs. Concern exists in nursing education because of the cost of nursing education and facilities and competition for clinical site facilities.

Recommendations

The committee recommends the following goals for higher education:

Policy Area	Goals
Attainment	The education attainment of North Dakota's population will be at the level of the highest-performing countries in the world.
Accessibility	Students in all parts of North Dakota will have ready access to both two-year and four-year degrees in a wide range of academic programs.
Contribution to economic development	North Dakota will have an increasing number of high-wage jobs through the following methods: • The University System will produce graduates who are educated to meet the needs of the state's economy. • The University System will be responsive to the training needs of the state's employers. • The research conducted at the state's universities will contribute to the expansion and diversification of the state's economy.
System functioning	The University System will function in a way that all the assets of the system will be efficiently utilized in achieving the goals established.
Affordability	Higher education in North Dakota will be affordable to both the students and the taxpayers of the state.

The committee recommends Senate Bill No. 2038 to extend the continuing appropriation of higher education institutions' special revenue funds, extend the requirement of the University System block grant format budget request and appropriation, extend the exemption of University System unexpended appropriation cancellations, provide for a 2009-10 interim Legislative Council study of higher education, and provide that the following performance measures be included in the higher education performance and accountability report pursuant to NDCC Section 15-10-14.2:

Policy Area	Accountability Measures
Education attainment	Proportion of the population aged 25 to 34 with an associate's degree or higher benchmarked against the national average and best-performing country Number of certificates, associate's degrees, and baccalaureate degrees awarded to the 18-year-old population six years prior benchmarked against the national average and best-performing state
Accessibility	Proportion of recent high school graduates enrolled in two-year and four-year University System institutions, and nonpublic institutions to the extent information is available, the following fall by county Proportion of the population aged 25 to 44 with at least a high school diploma enrolled in either a two-year or four-year University System institution, or nonpublic institution to the extent information is available, for a credit-bearing course by county
Contribution to economic development	Number of individuals who graduated within the past three years from the University System, and nonpublic institutions to the extent information is available, employed in North Dakota benchmarked against historical trends Number of individuals who graduated within the last three years from the University System, and nonpublic institutions to the extent information is available, employed in North Dakota in jobs paying at least twice the amount established as the poverty level in the state benchmarked against historical trends Annual dollar amount of research expenditures by North Dakota institutions of funds received from federal, foundation, and business sponsors benchmarked against historical trends Number of certificates and associate's degrees awarded in vocational and technical fields benchmarked against historical trends Number of baccalaureate degrees awarded in the fields of science, technology, engineering, and mathematics benchmarked against historical trends
Affordability	Tuition and fees relative to the lowest quintile per capita income in the state benchmarked against the national average and the state with the lowest ratio Percentage of family income--an average of all income groups--needed to pay for college expenses after deducting grant aid benchmarked against the national average and the state with the lowest ratio Average amount of student loan debt incurred each year by undergraduate students benchmarked against the national average and the state with the lowest ratio
Education excellence	Student performance on nationally recognized examinations benchmarked against national averages First-time licensure pass rates benchmarked against the best-performing states Alumni- and student-reported satisfaction with preparation in selected major, acquisition of specific skills, and technology knowledge and abilities benchmarked against historical trends Employer-reported satisfaction with preparation of recently hired graduates benchmarked against historical trends
Financial operations	Appropriations for general operations plus net tuition revenue per FTE student benchmarked against the national average and the best-performing state Student share of funding for general operations benchmarked against the national average and historical trends Number of degrees and certificates produced relative to annual state appropriations for general operations plus net tuition revenue benchmarked against the best-performing state
System functioning	Number of student credit-hours delivered by University System institutions to students attending another system's institution benchmarked against historical data Results of a biennial survey of state leaders regarding the perceptions of the system's functioning benchmarked against historical data

The committee, through the Legislative Council chairman, encouraged the University System to continue to analyze and revise the proposed higher education financing system and develop a financing system proposal based on the concept by June 1, 2009, or later at the discretion of the chairman of the 2009-10 Higher Education Committee.

CCBENEFITS, INC.

The committee was assigned, pursuant to Section 23 of House Bill No. 1018 (2007), to receive a report from the State Board of Higher Education regarding the status of the implementation of CCbenefits, Inc., services and the recommendations of using the services.

The committee received information from the University System regarding the use of CCbenefits, Inc., services. The committee learned that, due to a merger, CCbenefits, Inc., is now known as Economic Modeling Specialists, Inc. Economic Modeling Specialists, Inc., offers a strategic advantage tool, which is used at community colleges across the country. The tool provides integrated data for decisionmaking from over 70 national and state databases. The tool can be used to access information regarding workforce demands and basic population demographics. Currently, the state uses four modules of the tool--economic forecaster, economic impact, educational analyst, and socioeconomic impact analyses.

The committee learned the strategic advantage tool is being used by all University System community colleges as well as the University System office. The University System suggested use of the tool be increased through additional training, increased awareness, and collaboration. The University System also suggested that access to the tool be offered to all universities as applicable.

STUDY OF THE PROVISION OF SERVICES TO CHILDREN AND ADULTS WHO ARE DEAF OR HEARING-IMPAIRED

Section 14 of Senate Bill No. 2013 (2007) directed a study of the provision of services to children and adults who are deaf or hearing-impaired, including the role of the School for the Deaf in the provision of educational and rehabilitative services. The study was to include a review of the short-term and long-term viability of existing state facilities, alternative approaches that might enhance the scope and breadth of service availability, and the feasibility of combining the administration and delivery of services of the School for the Deaf with other entities. In addition, the study was to examine alternative uses for the buildings on the School for the Deaf campus beyond the scope of the school's present mission.

Current Population of Deaf or Hearing-Impaired Persons

The committee received information from the Department of Public Instruction regarding the number of students in North Dakota who are classified as deaf or hearing-impaired. The committee learned that 109 students are classified as deaf or hearing-impaired. The following schedule details the number of students by age who are deaf or hearing-impaired:

Age	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19
Number of deaf or hearing-impaired students	2	5	8	2	10	5	7	10	5	7	14	5	7	8	6	7	1

The committee learned that for every 1,000 births, there is a hearing impairment incidence rate of 2 to 3. In 2000 there was an estimated population of 70,433 hearing-impaired persons over the age of 15 in North Dakota. This number is expected to increase to 79,585 by 2010 and 84,235 by 2015.

School for the Deaf Administration

The committee learned the School for the Deaf was established in 1890 by the Constitution of North Dakota and is located in Devils Lake. The school is under the direction, control, and management of the Department of Public Instruction and is an institution for the education of children with severe to profound hearing loss that are not able to be served in their local school district. To be eligible for enrollment, a child must be between the ages of 0 and 21 and must be a resident of North Dakota. Out-of-state students are accepted on a tuition basis. Pursuant to NDCC Section 25-07-12, the school may collaborate with public and private entities for the provision of services to adult individuals who are deaf or hearing-impaired. The following is a summary of legislative appropriations and authorized FTE positions for the school for the bienniums 1997-99 through 2007-09:

Biennium	FTE Positions	General Fund	Special Funds	Total Funds
1997-99	53.93	$4,571,465	$531,878	$5,103,343
1999-2001	53.93	$4,701,654	$721,856	$5,423,510
2001-03	53.10	$5,070,479	$1,095,624	$6,166,103
2003-05	51.85	$5,073,242	$871,449	$5,944,691
2005-07	49.19	$5,365,097	$1,327,265	$6,692,362
2007-09	43.94	$5,390,438	$1,039,018	$6,429,456

The committee received information from the Department of Public Instruction regarding the feasibility of combining the administration of the School for the Deaf with another entity. The committee learned that NDCC Section 25-07-02 provides that the superintendent of the School for the Deaf may also act as superintendent of North Dakota Vision Services - School for the Blind. In addition, the committee learned contractual agreements are currently in place between some state institutions and local school districts. The Developmental Center at Westwood Park and the State Hospital have both provided education services to their residents through local school districts.

Services Provided by the School for the Deaf

The School for the Deaf provides comprehensive educational programming in a broad range of disciplines, including traditional academics, vocational education, special studies, physical education, and art, to students using signed or oral communication.

The School for the Deaf provides residential dormitory services from Sunday night through Friday morning during the school year. Students live in two dormitory areas and some of the older students have opportunities for an independent living experience in apartments on campus. Day students also have opportunities to participate in dormitory activities after school and in the evenings. Students are transported home for weekends and school vacations. To transport students to their homes, the School for the Deaf has contracted with a private air carrier service. Some students are also transported by a passenger van. The following schedule is a summary of on-campus students for the school years 2002-03 through 2006-07:

2002-03	33
2003-04	28
2004-05	30
2005-06	29
2006-07	26
2007-08	27

During the 2007-08 academic year, the estimated annual per student cost of providing residential education services at the School for the Deaf was $80,300. Of this amount, $72,525 was from the general fund.

Pursuant to NDCC Section 25-07-12, the School for the Deaf has expanded its mission to include a resource center on hearing loss with the responsibility to serve all citizens in North Dakota who are deaf or hearing-impaired. The school has outreach offices in Devils Lake, Fargo, Bismarck, and Minot. The following is a summary of outreach services provided:

Audiological services	Direct comprehensive audiological services are available to all students aged 0 to 21. Education is also provided by the audiologist in meeting the audiological needs of individuals who are deaf or hearing-impaired.
Communications services	The school provides a variety of communications services, including interpreter, tutoring, notetaking, closed-caption encoding, and sign language instruction.
Library and media center	The library and media center contains a variety of resources, including books, videotapes, captioned films and videos, and magazines on deafness, deaf culture, and sign language.
Parent/infant program	A home-based program for deaf or hearing-impaired children aged 0 to 3 and their families. The program is family-centered and is individualized to the family's needs and the child's learning style through an individual family service plan. Information is shared with the family on how to encourage listening skills, communication, language, and speech development through natural daily activities. Parents are also invited to attend community and statewide workshops and family learning vacations.

The committee received information regarding the total number of persons served by the School for the Deaf through its various programs. The following schedule provides information regarding the persons served through School for the Deaf programs since the 2001-03 biennium:

Service	2001-03	2003-05	2005-07	2007-09[1]
Students served at School for the Deaf	67	59	57	27
Total served by outreach programs	4,301	6,055	8,943	4,000
Interpreter services	221	359	617	375
Deaf-blind services	78	74	80	43
Parent/infant program contacts	32	36	36	32
Outreach class attendance	295	300	965	95
Outreach school-age student contact	14	19	87	177

[1]Through May 20, 2008.

School for the Deaf Facilities

The committee learned the School for the Deaf campus is located on 27 acres and consists of 18 buildings. The total square feet of building space is 139,811, of which 88,329 square feet is essential to the operation of the school. The total replacement value of all buildings on campus is $14,265,810.

The committee conducted a tour of the School for the Deaf campus. Committee members toured various buildings, including the Blackhurst Dormitory, the A. R. Spear School Building, and the Vocational and Trades Building. The committee also viewed students receiving educational instruction in a classroom setting.

The committee received information regarding alternative uses for buildings on the School for the Deaf campus. The committee learned that a School for the Deaf heritage center has been proposed for vacant land on campus. In addition, residents from Devils Lake have formed a committee to review the feasibility of constructing an activities center adjacent to the school's swimming pool and gymnasium.

The committee learned NDCC Section 15.1-02-07 authorizes the Superintendent of Public Instruction to lease surplus portions of real property, including buildings owned by the state, for use by the School for the Deaf. During the 2007-08 academic year, the school leased 18,222 square feet of building space to various state and local entities.

The committee learned the School for the Deaf is including several campus projects in its 2009-11 budget request. The school is requesting $1.6 million from the general fund to renovate the former Vocational and Trades Building to allow the building to be leased to another state entity. Other projects included in the budget request include demolition of the former medical building and the development of a site plan for the campus.

Educating Deaf or Hearing-Impaired Students

The committee received information from representatives of the School for the Deaf, Department of Public Instruction, and local school districts regarding educational services available to students who are deaf or hearing-impaired. The committee learned the federal Individuals With Disabilities Education Act ensures all children with disabilities receive a free and appropriate

education. Part of the Act requires students with disabilities to receive an individualized education program to accommodate the specialized needs of the student. In addition, a student is to be educated in the least restrictive environment available which may be a local school district rather than a specialized school.

The committee received information regarding educational trends of deaf students and hearing-impaired students from a study conducted by the National Center on Severe and Sensory Disabilities at the University of Northern Colorado. The committee learned there is a national decline in the number of students enrolled at schools for the deaf because of an emphasis on hearing-impaired education in local school districts. This has resulted in an increase in the per student costs at deaf schools. The following schedule included in the study provides information on the proportion of deaf and hearing-impaired students between the ages of 6 and 21 who are educated in a regular classroom setting:

Year	National Average	North Dakota Average
2003-04	86.3	79.9
2004-05	86.5	77.1
2005-06	86.5	76.2
2006-07	86.4	79.6

Other States' Schools for the Deaf or Hearing-Impaired

The committee learned that 43 states operate a school for deaf or hearing-impaired students. The majority of states also provide educational programming for deaf or hearing-impaired students in local school districts. The per student costs of educating deaf or hearing-impaired students in a residential setting ranged from $65,000 to $95,000 in other regional states.

Some states, such as Nebraska, do not have a school for the deaf. Instead, students that require residential services are placed in an out-of-state facility. The state of Nebraska has a contract with the Iowa School for the Deaf to educate Nebraska deaf or hearing-impaired students who need a residential setting. For fiscal year 2009, the contract rate for each student is $68,759.

The table below summarizes the type of governing structure in place for all public and private schools for the deaf and blind in the United States:

Governing Structure	Schools for the Deaf	Schools for the Blind	Schools for the Deaf and Blind
State education agency/state board of education	47%	45%	36%
Separate state agency	18%	24%	64%
Private/nonprofit board	22%	18%	0%
State social service department	7%	9%	0%
Other	6%	4%	0%

Potential Future Services

The committee received information from representatives of the School for the Deaf regarding the expansion of current services and the potential implementation of additional services.

The school is considering expanding its outreach program to accomplish the following goals:

1. Provide early intervention services for children who are deaf or hard-of-hearing aged 0 to 5.
2. Develop and support quality programs for individuals who are deaf or hard-of-hearing to promote opportunities to acquire effective communication skills and equal access.
3. Provide access to current and emerging technologies.
4. Develop and maintain a coordinated statewide communication network.
5. Provide parents and consumers with necessary support and training.
6. Ensure that all staff are qualified and appropriately trained.

The School for the Deaf is also reviewing options for expanding its captioning services program. The expansion would allow the school to implement a real-time online captioning service to provide interpreter services to local school districts. In addition, the school is reviewing the feasibility of expanding its videotape captioning service. Expansion of these services may generate additional income for the school.

Potential Options for the School for the Deaf

The committee received information regarding suggested options for the School for the Deaf from a study conducted by the National Center on Severe and Sensory Disabilities at the University of Northern Colorado. The options provided were:

1. Maintain current services.
2. Reconfigure the School for the Deaf by eliminating the residential program but keeping either a day program only, an outreach program only, or only utilizing regional centers.
3. Create a center for technology that makes the delivery of services possible statewide and reconfigure the current campus to serve as the base.
4. Collaborate with other state departments of education to serve students who are deaf or hard-of-hearing, either on the North Dakota campus or in a virtual environment.
5. Close the School for the Deaf and rely on local education agencies to deliver education and services to North Dakota residents who are deaf or hard-of-hearing.

Other Information Received

The committee received other information regarding deaf or hearing-impaired services. The committee learned that students at the School for the Deaf have the opportunity to attend certain classes at Devils Lake Public School. Reverse mainstreaming also allows students from Devils Lake Public School to attend classes at the School for the Deaf.

The committee learned about the careers of graduates of the School for the Deaf. Approximately

70 percent of all graduates from 1960 to 2000 are in a career that allows them to remain self-sufficient.

The committee reviewed information regarding the recommendations that were made for the School for the Deaf by the Blue Ribbon Task Force in 2004. The task force recommended the:

- School pursue high-priority revenue projects.
- School reduce high-priority expenditures.
- School pursue high-priority collaborative agreements.
- School pursue high-priority outreach and marketing concepts.
- Mission be expanded to include delivery of programs to adults over the age of 21.
- School's strategic plan be modified to incorporate economization measures.
- Additional alternatives be identified and implemented to enhance the school's short-term and long-term cost-effectiveness.
- Assessment of progress in implementing the recommendations.

Committee Considerations

The committee, through the Legislative Council chairman, encouraged the Department of Public Instruction to review, with input from local school districts, parents, and other stakeholders, options under consideration for the school, including collaboration with other states, and to develop a plan for presentation to the 2009 Legislative Assembly for the future of the school. The Department of Public Instruction reported to the committee that it would not be feasible to develop recommendations to present to the 2009 Legislative Assembly in the limited amount of time available. The department suggested an alternative plan be considered by the 2009 Legislative Assembly:

- Obtain a consultant during the 2009-10 academic year to assist the school in developing a plan for future services to be provided by the school;
- Begin implementing the suggested changes resulting from the plan during the 2010-11 academic year; and
- Provide progress reports to a Legislative Council interim committee during the 2009-10 interim.

The committee considered but did not adopt the Department of Public Instruction's alternative plan.

Recommendations

The committee recommends House Bill No. 1034 to provide for a continuation of the study of the provision of services to deaf or hearing-impaired persons during the 2009-10 interim, including a general fund appropriation of $100,000 to retain consulting services.

HUMAN SERVICES COMMITTEE

The Human Services Committee was assigned the following responsibilities:

1. Section 3 of Senate Bill No. 2186 (2007) provided for a study of the temporary assistance for needy families (TANF) program administered by the Department of Human Services. The study was to include a review of the sustainability of current services and programs being funded by the TANF program, a review of the potential programs and services that could be funded with TANF funds, and a review of the need for increased assistance to TANF recipients who are attending a postsecondary institution of learning.
2. Section 18 of Senate Bill No. 2205 (2007) directed a study of the success and effects of the laws enacted by the 55th Legislative Assembly in House Bill No. 1041 (1997) and Senate Bill No. 2052 (1997), known as the "swap proposal." The study was to review the North Dakota Century Code (NDCC) to determine if the provisions have created a more understandable and sustainable division of responsibility between the state and counties in the delivery and financing of these economic assistance programs.
3. Section 9 of Senate Bill No. 2012 (2007) directed a study of infant development programs, including a review of the state's lead agency agreement, service coordination, staffing, and funding structure.
4. The Legislative Council assigned the committee the responsibility to receive a recommendation from the Insurance Commissioner on entities able 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 pursuant to NDCC Section 54-03-28.
5. The Legislative Council also assigned the committee the responsibility to receive the following reports:
   a. Annual reports from 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.
   b. A report from the Department of Human Services before August 1, 2008, regarding the status of medical assistance recipients' access to dental services pursuant to Section 1 of House Bill No. 1246 (2007).
   c. Periodic reports from the State Department of Health's Immunization Task Force regarding the impact of the immunization program transition on the local public health units and the fiscal impact of the transition pursuant to Section 2 of House Bill No. 1435 (2007).
   d. A report from the Department of Human Services regarding the transition assistance for the child care program implemented pursuant to Section 1 of Senate Bill No. 2186 (2007).
   e. Annual reports from the Department of Human Services regarding the status of the alternatives-to-abortion services program pursuant to Section 2 of Senate Bill No. 2312 (2007).
   f. A report from the Dean of the North Dakota College of Nursing regarding the Nursing Education Consortium to address common concerns in nursing education pursuant to Section 1 of Senate Bill No. 2379 (2007).
   g. Semiannual reports and a final report by October 1, 2008, from the Drug Utilization Review Board regarding the board's review of utilization, cost, and effectiveness of certain drugs and the board's findings and recommendations for legislative changes pursuant to Section 2 of House Bill No. 1422 (2007).

Committee members were Representatives Jeff Delzer (Chairman), Patrick R. Hatlestad, Curt Hofstad, Lee Kaldor, James Kerzman, Gary Kreidt, Jon Nelson, Vonnie Pietsch, Chet Pollert, Clara Sue Price, Ken Svedjan, and Robin Weisz and Senators JoNell A. Bakke, Dick Dever, Robert S. Erbele, Aaron Krauter, Judy Lee, Jim Pomeroy, and John M. Warner.

The committee submitted this report to the Legislative Council at the biennial meeting of the Council in November 2008. The Council accepted the report for submission to the 61st Legislative Assembly.

TEMPORARY ASSISTANCE FOR NEEDY FAMILIES STUDY

Section 3 of Senate Bill No. 2186 (2007) directed a study of the TANF program administered by the Department of Human Services. The study was to include a review of the sustainability of current services and programs funded by TANF funds, a review of potential programs that could be funded with TANF funds, and a review of the need of increased assistance to TANF recipients who are attending a postsecondary institution of learning.

Federal TANF Law

The committee learned Congress reauthorized the TANF program in February 2006 as part of the Deficit Reduction Act of 2005. Congress made two major changes to the program:

1. The federal TANF law, since federal fiscal year 2002, required that 50 percent of all TANF families be engaged in a qualified work activity for 30 hours or more per week (20 hours if the family includes a child who has not reached

age 6). States get a caseload reduction credit for meeting the work participation requirement. Reauthorization changed the base year for calculating the caseload reduction credit from federal fiscal year 1995 to federal fiscal year 2005. The effect on North Dakota of this change was to greatly decrease North Dakota's caseload reduction credits. Failure to achieve a 50 percent work participation rate can lead to severe fiscal penalties.

2. The federal TANF law originally defined the term "work activity" but allowed states to determine what activities were within the definition. Reauthorization gave federal officials authority to require nationally uniform definitions and require states to secure verification that work activity hours are accurately claimed. Federal officials have proposed strict requirements for definitions and verifications with initial work verification plans due September 30, 2006.

The committee learned federal law provides that TANF funds may be used to:

1. Provide assistance to needy families so that children may be cared for in their own homes or in the homes of relatives.
2. End the dependence of needy parents on government benefits by promoting job preparation, work, and marriage.
3. Prevent and reduce the incidence of out-of-wedlock pregnancy and establish annual numerical goals for preventing and reducing the incidence of these pregnancies.
4. Encourage the formation and maintenance of two-parent families.

TANF Funding

The committee learned North Dakota's federal TANF block grant is $26.4 million per year. The committee reviewed the following schedule which details the amount of TANF funding available during the 2007-09 biennium and the projected uses:

Projected TANF funds available - 2007-09 biennium			
Estimated balance brought forward from 2005-07 biennium		$22,945,647	
Federal fiscal year 2008 revenue allocation - October 2007 to September 2008		26,399,809	
Federal fiscal year 2009 revenue allocation - October 2008 to June 2009		19,799,856	
Total estimated revenue available - 2007-09 biennium			$69,145,312
Projected expenditures of TANF funds - 2007-09 biennium			
Transfer to social services block grant		$1,246,220	
Early childhood care workforce development		500,000	
Assistance to needy families			
TANF benefit	$5,509,038		
TANF kinship care	363,000		
TANF transition child care	817,580	6,689,618	
Job preparation			
Work activity	$155,718		
Job opportunities and basic skills (JOBS)			
Transportation	2,655,709		
Client services	5,724,733		
Support service	589,659	9,125,819	
Formation and maintenance of families			
Wraparound case management	$2,322,550		
Child abuse and neglect investigations	4,280,750		
Parent aide	1,083,350		
Intensive in-home services	801,342		
Foster care emergency assistance	19,724,701	28,212,693	
Other			
Systems maintenance and operations	$1,953,408		
Alternatives-to-abortion program	300,811		
County emergency assistance - Case management	1,580,916		
County TANF assessments	569,348	4,404,483	
Administration			
JOBS contract administration	$1,101,858		
State office administration	2,244,695		
County administration	3,209,624		
Human service center administration	765,580	7,321,757	
Total projected expenditures - 2007-09 biennium			$57,500,590
Estimated balance to carry forward to 2009-11 biennium			$11,644,722

The committee learned the projected TANF carryover of $11,644,722 to the 2009-11 biennium is $4,888,565 more than the $6,756,157 estimated at the beginning of the biennium.

The committee reviewed the following schedule which details the use of TANF funds each biennium since the 1999-2001 biennium:

Category	1999-2001 Actual Expenditures	2001-03 Actual Expenditures	2003-05 Actual Expenditures	2005-07 Actual Expenditures
Assistance to needy families	$12,190,046	$18,964,192	$11,051,347	$7,056,645
Job preparation	5,052,408	8,612,796	8,531,892	9,002,755
Formation and maintenance of families	16,684,265	17,344,398	21,673,374	23,392,522
Other	9,891,157	7,223,635	3,454,710	3,726,734
Administration	6,215,538	7,028,860	5,910,949	6,355,467
Total	$50,033,414	$59,173,881	$50,622,272	$49,534,123

Assistance to Needy Families

Program Recipients

The committee received the following information regarding the unduplicated number of TANF clients:

Fiscal Year	Unduplicated Cases	Average Number of Clients Per Household	Total Number of Recipients	Recipients as a Percentage of Population
2007	5,112	2.2	13,504	2.1%
2006	5,259	2.2	14,043	2.2%
2005	5,524	2.2	14,776	2.3%
2004	5,887	2.1	15,872	2.5%

From July 2001 through June 2007 the number of months a family received TANF benefits were:

1. 10,242 clients - 0 to 12 months.
2. 3,241 clients - 13 to 24 months.
3. 892 clients - 37 to 48 months.
4. 489 clients - 49 to 60 months.
5. 413 clients - 60 or more months.

TANF Benefits

The committee reviewed TANF benefits. The committee learned the various components of the program include:

1. Regular TANF benefit - Intended to meet six basic items of need--food, shelter, clothing, fuel and utilities, household supplies, and personal needs. The benefit is received monthly.
2. Diversion assistance - Provides qualified families with cash assistance for up to 4 months within a 12-month period to assist them in becoming or remaining self-sufficient. Average diversion cases are 431 per month with approximately 51 percent of cases eventually moving to the TANF program.
3. TANF kinship care - Expands the options for placement of children who are under the custody of a county or the department by providing enhanced funding to individuals eligible for the program.
4. Transitional child care assistance - Promotes job retention by providing an extended service of assistance to qualified TANF households to further assist working families to remain self-sufficient.
5. JOBS program - Combines education, training, and employment components to assist TANF recipients make the transition to employment.
6. Transition assistance - Allows eligible recipients to receive up to six months of benefits near the anticipated closure of their TANF case. In addition to cash assistance, the program assists participants with child care and transportation needs.

The committee received the following information regarding the various components of the TANF program:

	TANF	TANF - Diversion	TANF - Kinship Care	TANF - Transition
Upfront eligibility	Child support and JOBS	Pathways	Child support	N/A
JOBS referral	Referral required	N/A	N/A	Enrolled at application
Pathways referral	N/A	Referral required	N/A	N/A
Child support referral	Yes	No	Yes	Referred at application
Health Tracks referral	Yes	No	Yes	Yes
Social contract	Yes	No	Yes	Yes
Monthly reporting	Yes	Yes	Yes	Yes
Child care expenses	Paid to provider	Paid to provider	Paid to caretaker	Paid to caretaker
Work retention payment	N/A	N/A	N/A	$200 per month
Transportation allowance	Maximum of $125	Maximum of $125	N/A	Maximum of $125
Program time limits	Lifetime of 60 months	4 months/ 12-month period	N/A	6 continuous months
Child support income	Assigned to state	Paid to caretaker - Counted as income	Assigned to state	Assigned to state

The committee received information regarding the history of TANF benefits. On July 1, 1997, a TANF benefit for a family of three with one adult and two children was $440. Beginning August 1, 1998, the benefit was increased by 2.2 percent to $450. Beginning July 2001 benefits were recalculated to remove the "bundled benefit" calculation which had included food stamps and heating assistance. As a result, the TANF benefit for a family of three increased from $450 to $477 per month. In January 2004 a dual standard-of-need policy was implemented which removed a "double benefit" for families that were also receiving housing or rent assistance. This change resulted in these families receiving $50 per month less from TANF. Since then, no additional changes have been made. The monthly

benefit for a family of three receiving housing or rent assistance is $427 and the monthly benefit for a family not receiving housing or rent assistance is $477.

The committee learned historically TANF benefits have not been adjusted for inflationary increases; however, the department continues to explore supportive services that assist TANF clients to become self-sufficient.

The committee received the following information on the estimated cost of alternatives for increasing the TANF benefit for the 2007-09 biennium based on an average monthly caseload of 2,750 and average benefit of $340:

Increase Amount	First Year	Second Year	Estimated Additional Cost Per Biennium
2 percent first year; 2 percent second year	$347	$354	$693,020
3 percent first year; 3 percent second year	$350	$361	$1,230,020
4 percent first year; 5 percent second year	$354	$372	$1,518,020

TANF Program Sanctions

The committee received information on TANF program sanctions. The committee learned federal law directs states to impose financial sanctions by reducing or eliminating TANF benefits to recipients that fail to comply with program requirements. From October to December 2007, the committee learned sanctions were imposed on 3.6 percent to 5 percent of the cases.

The committee learned monthly reporting is required under the TANF program and the report is due on the fifth day of each month. However, there is currently no penalty imposed on TANF recipients that submit their monthly report late

Closure of TANF Cases

The committee learned from July 2001 through September 2007, 110 TANF cases have been closed because the head of household received the maximum of 60 months of TANF payments. Nineteen cases have received an exemption from the 60-month lifetime limit based on incapacity of the individual, incapacity of a spouse, incapacity of a dependent child, or domestic violence during this same time period. Other reasons TANF cases close include paid employment, sanctions for noncooperation with child support enforcement or JOBS requirements, receipt of child support income, excess resources, dependent children no longer in the household, family requested the case to close, and other reasons.

The committee learned the number of TANF clients no longer receiving benefits but continuing to receive other assistance for the first and second quarters of 2007 include:

Program	First Quarter	Second Quarter
Child care assistance	141	130
Food stamps	522	510
Medicaid	516	479

Work and Education Participation

The committee learned North Dakota's work participation rate for August 2007 was 50.64 percent and each state must achieve a 50 percent minimum overall participation rate minus any caseload reduction credit. The caseload reduction credit is 6.1 percent for federal fiscal year 2007. During this same time period, an average of 391 TANF clients were in paid employment.

The committee learned the Department of Human Services has contracted with Job Service North Dakota for employment and training services since welfare reform in the late 1990s. As a result of North Dakota's TANF caseload declining over the years, many of the remaining TANF clients have greater challenges and are more difficult to serve. The department reduced its contract with Job Service North Dakota and began contracting with Career Options in November 2007 to provide services for a major portion of the JOBS program.

The committee learned current federal rules allow a participant to use education as an allowable activity for 12 months. State funds would need to be used to allow individuals to count education as an allowable activity for 24 months. The committee learned two options exist for providing TANF clients with funding for postsecondary education opportunities. The first option is to continue the current practice of clients applying for student grants and loans. In addition, TANF clients can currently receive up to $1,000 in assistance per year for tuition and books. The second option is to use TANF funds to pay for all tuition and books. The average estimated cost for a student's tuition, fees, and books for one year is $6,530. If all eligible TANF clients were to participate in a postsecondary education program, the total estimated cost would be approximately $4,179,200 per year.

The committee learned the TANF program may be used to address areas of worker shortage in North Dakota. Successful welfare-to-work programs emphasize employment and provide a wide range of services that include a strong education and training component. Through the JOBS program, the department has the ability to match TANF clients with various career options.

The committee received information regarding other states' TANF initiatives. The committee learned:

- New Mexico "Education Works" program is used as an educational option for recipients of TANF.
- Arkansas "Work Pays" program provides assistance to prior TANF recipients in an effort to increase the percentage of recipients that are self-sufficient after leaving the TANF program.

The committee received information regarding strategies to maintain state flexibility despite federal TANF work participation rules. The committee learned strategies include:

- Work engagement strategies involve becoming more aggressive in engaging clients more quickly in work activities. An example of this type of strategy is the diversion assistance program that assists individuals to become employed before needing TANF benefits.

- Targeting or "take-out" strategies involve programs that focus efforts on increasing the effective engagement of those TANF recipients most likely to benefit. These programs provide assistance and services to families unlikely to meet work participation requirements or recipients that engage in activities that do not meet federal definitions. Because these individuals are receiving services and benefits under a separate program, they are not included in the TANF caseload.
- Postemployment strategies allow TANF recipients that are working be included in the TANF caseload.

Other Testimony Received

The committee received other information and testimony, including:

- Options to increase program efficiency and effectiveness, including:

  Allowing payment of TANF transition child care expenses directly to the provider instead of the recipient;

  Eliminating the delay and availability of the TANF grant for first-time ReliaCard users;

  Extending education as an allowable JOBS activity from 12 months to at least 24 months; and

  Establishing a penalty for all TANF households that submit their reports after the 10th day of the month.
- Information regarding the Career Options program.
- Information regarding available jobs and training for TANF recipients.

Recommendations

The committee makes no recommendations regarding the TANF program study.

STUDY OF ECONOMIC ASSISTANCE PROGRAM RESPONSIBILITIES OF THE STATE AND COUNTIES

Section 18 of Senate Bill No. 2205 (2007) provided for a Legislative Council study of the success and effects of the laws enacted by the 55th Legislative Assembly in House Bill No. 1041 (1997) and Senate Bill No. 2052 (1997), known as the "swap proposal," which required counties to pay the entire cost of the local administration of Medicaid, energy assistance, basic care assistance, child care assistance, and TANF in exchange for the state's assumption of the full responsibility for paying the grant costs associated with those programs. The study was to include a review of various sections of the North Dakota Century Code to determine if the provisions have created a more understandable and sustainable division of responsibility between the state and counties in the delivery and financing of these economic assistance programs.

Overview

The committee learned House Bill No. 1041, approved by the 1997 Legislative Assembly, required counties, effective January 1, 1998, to assume the financial responsibility for the cost of administering the following economic assistance programs:

1. Aid to families with dependent children (AFDC).
2. JOBS program.
3. Child care block grant.
4. IV-A at-risk child care.
5. Food stamps.
6. Medical assistance.
7. Low-income home energy assistance program (LIHEAP).
8. Refugee assistance.
9. Basic care assistance.

In return the bill required the state to assume complete financial responsibility for the grant costs of medical assistance and basic care assistance and to contribute additional support for the administrative costs of counties with Indian land. The bill was expected to result in additional general fund costs of $2.2 million per year based on actual program costs for calendar year 1995. The estimated additional cost to the general fund for the 1997-99 biennium based on the January 1, 1998, effective date was $3.3 million.

The committee received the following schedule which summarizes each section of House Bill No. 1041 and subsequent legislative changes:

1997 HB 1041 - Bill and NDCC Sections	Description/Amendment
Section 1 50-01.2-00.1	Defines local expenses of administration and identifies the economic assistance programs included in the "swap" agreement Legislative changes: • The 1999 Legislative Assembly amended the definition of local expenses of administration by removing reference to costs associated with achieving caseload ratios of 65 cases to one worker. • The 2001 Legislative Assembly amended the definition of local expenses of administration by replacing the training, education, employment, and management (TEEM) program with the TANF program. • The 2007 Legislative Assembly changed the programs included by removing child support enforcement programs and programs established under Section 50-06-01.8 which related to the department seeking a waiver for the TEEM program.

1997 HB 1041 - Bill and NDCC Sections	Description/Amendment
Section 2 50-01.2-06	Relates to the standards of administration of economic assistance programs and procedures to follow if a county fails to provide for the administration of these programs Legislative changes: • The 1997 Legislative Assembly amended this section to provide that members of the peer review committee be compensated in the amount of $62.50 per day. • The 2001 Legislative Assembly amended this section to update statutory references relating to appeals hearings in district court.
Section 3 50-01.2-03.1	Authorizes county social service boards to contract for the administration of economic assistance programs Legislative changes: • This section has not been changed.
Section 4 50-01.2-03.2	Establishes the duties of the county in administering these economic assistance programs and provides for additional state funding for counties with an Indian reservation Legislative changes: • The 1999 Legislative Assembly amended this section to establish a formula for providing financial assistance to counties within an Indian reservation. • The 2001 Legislative Assembly amended the Indian county payment formula by reducing the payment from 100 percent to 90 percent of an affected county's expenses that are in excess of the statewide average. • The 2005 Legislative Assembly amended this section to return the payment formula to 100 percent of an affected county's expenses that are in excess of the statewide average.
Section 5 50-03-00.1	Provides that the definitions included in this chapter relating to county human service funds have the same meaning as in Chapter 50-01.2 relating to county social service boards Legislative changes: • This section has not been amended.
Section 6 50-03-08	Identifies expenses that are the responsibility of the counties Legislative changes: • This section has not been amended.
Section 7 50-03-09	Requires the Department of Human Services to develop a formula to determine each county's share of the costs identified in Section 50-03-08 Legislative changes: • This section has not been amended.
Section 8 50-03-10	Provides that the counties provide an annual recommendation to the Department of Human Services for determining the distribution of social service block grant funds, similar general fund equivalents, and child support incentive funds among the counties Legislative changes: • The 2005 Legislative Assembly amended this section to provide that the department distribute child support incentive funds according to a formula that promotes performance and consistency in child support enforcement activities throughout the state. • The 2007 Legislative Assembly removed provisions relating to the department distributing child support incentive funds to counties.
Section 9, subsection 28 50-06-05.1	Identifies the point at which funds are considered obligated when spent by the Department of Human Services Legislative changes: • This subsection has not been amended.
Section 10 50-06-20	Identifies the economic assistance program grant costs that are the responsibility of the state. The programs include Medicaid, fuel assistance, basic care assistance, child care assistance, employment and training programs, welfare fraud detection programs, TANF programs, and special projects approved by the department. Legislative changes: • This section has not been amended.
Section 11 50-24.1-14	This section identifies that the medical assistance grant costs, except for expenses identified under Section 50-03-08, are the responsibility of the state. Legislative changes: • This section has not been amended.
Section 12 50-24.5-09	Provides that the responsibility for expenditures to the aged, blind, and disabled are the responsibility of the state, except for expenses identified under Section 50-03-08. Legislative changes: • This section has not been amended.

State Appropriations for Economic Assistance Programs

The committee received information regarding state appropriations for economic assistance programs. The schedule below presents legislative appropriations for grant costs of TANF, basic care assistance, child care assistance, medical assistance, and Indian counties assistance for the 1997-99 through 2007-09 bienniums:

	1997-99	1999-2001	2001-03	2003-05	2005-07	2007-09
TANF						
General fund	$5,700,000	$5,500,000	$3,950,382	$3,950,382	$3,938,442	$4,314,942
Special funds	4,000,000	6,397,947	10,525,123	12,215,691	12,166,206	11,303,716
Federal funds	31,200,000	13,110,930	11,150,551	13,341,867	8,155,352	6,821,322
Total	$40,900,000	$25,008,877	$25,626,056	$29,507,940	$24,260,000	$22,439,980
Child care assistance						
General fund				$5,726,109		
Special funds	$3,528,016	$3,675,262	$4,013,314		$4,226,895	$5,225,819
Federal funds	14,749,420	12,832,634	17,233,719	21,335,096	17,736,229	17,401,999
Total	$18,277,436	$16,507,896	$21,247,033	$27,061,205	$21,963,124	$22,627,818
Basic care assistance						
General fund	$1,654,727			$747,857	$5,374,918	$6,097,305
Special funds	4,473,987	$7,690,647	$2,783,072	2,284,362	2,442,457	2,284,362
Federal funds			6,081,186	5,363,506	5,484,596	5,701,454
Total	$6,128,714	$7,690,647	$8,864,258	$8,395,725	$13,301,971	$14,083,121
Medical assistance[1]						
General fund	$180,467,562	$195,469,683	$217,096,629	$259,872,239	$305,282,957	$367,900,585
Special funds	7,206,368	8,035,112	36,388,827[2]	12,584,800	29,940,507	36,772,356
Federal funds	422,301,922	471,880,515	550,022,159	596,320,683	637,259,645	711,393,360
Total	$609,975,852	$675,385,310	$803,507,615[2]	$868,777,722	$972,483,109	$1,116,066,301
Grants to Indian counties						
General fund		$121,766	$456,993	$649,559	$1,147,174	$955,124
Special funds	$1,059,000	1,654,654	2,068,007	1,964,607	1,964,607	1,964,607
Total	$1,059,000	$1,776,420	$2,525,000	$2,614,166	$3,111,781	$2,919,731
Total						
General fund	$187,822,289	$201,091,449	$221,504,004	$270,946,146	$315,743,491	$379,267,956
Special funds	20,267,371	27,453,622	55,778,343	29,049,460	50,740,672	57,550,860
Federal funds	468,251,342	497,824,079	584,487,615	636,361,152	668,635,822	741,318,135
Total	$676,341,002	$726,369,150	$861,769,962	$936,356,758	$1,035,119,985	$1,178,136,951

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

[2]Includes the $16.3 million special funds deficiency appropriation from the health care trust fund and the permanent oil tax trust fund approved by the 2003 Legislative Assembly.

County Costs

The committee reviewed the following schedule of county administrative cost changes since state fiscal year 1999:

	SFY 1999	SFY 2000	SFY 2001	SFY 2002	SFY 2003	SFY 2004	SFY 2005	SFY 2006	SFY 2007
County administrative costs included in "swap"	$19,725,886	$20,301,458	$20,950,351	$21,678,741	$22,640,962	$23,722,533	$24,634,452	$25,572,647	$26,373,314
Annual increase		$575,572	$648,893	$728,390	$962,221	$1,081,571	$911,919	$938,195	$800,667
Percentage increase		2.92%	3.20%	3.48%	4.44%	4.78%	3.84%	3.81%	3.13%

The committee learned information technology costs paid by the counties to the Department of Human Services are limited to actual calendar year 1995 costs increased by the consumer price index. The costs paid each year were:

	CY 1998	CY 1999	CY 2000	CY 2001	CY 2002	CY 2003	CY 2004	CY 2005	CY 2006
Technology costs	$550,943	$563,064	$582,208	$598,510	$608,086	$622,072	$638,868	$660,589	$681,728
Annual increase		$12,121	$19,144	$16,302	$9,576	$13,986	$16,796	$21,721	$21,139
Percentage increase		2.20%	3.40%	2.80%	1.60%	2.30%	2.70%	3.40%	3.20%

Indian County Payments

The committee learned prior to the 1997-99 biennium, the Department of Human Services was appropriated $440,000 to be allocated to Benson, Sioux, and Rolette Counties for assisting in the cost of providing economic assistance programs due to the large amount of tax-exempt land in these counties. The 1997 Legislative Assembly provided an additional $619,000 to the Indian county appropriation for assistance to these counties. Beginning in the 1999-2001 biennium, the Indian county payments were based on a statutory formula. The following schedule provides information on Indian county payments since the 1997-99 biennium:

		Locally Administered Economic Assistance Program Costs in Excess of Statewide Average Costs (Expressed in Mills)			
		Formula Effective January 1, 2000	Reimbursed at 90 percent		Reimbursed at 100 percent
County	1997-99 Biennium	1999-2001 Biennium	2001-03 Biennium	2003-05 Biennium	2005-07 Biennium
Benson	$174,086	$266,641	$393,794	$441,930	$540,101
Dunn		30,132	40,788	59,543	68,122
McKenzie		100,036	167,740	105,352	106,518
Mountrail		140,661	270,437	321,497	415,824
Rolette	704,672	926,269	1,193,203	1,347,762	1,499,962
Sioux	180,236	312,681	415,014	440,542	560,359
Total	$1,058,994	$1,776,420	$2,480,976	$2,716,626	$3,190,886
Biennial increase		$717,426	$704,556	$236,650	$474,260
Percentage increase		67.75%	39.66%	9.50%	17.46%

Fiscal Effect of the Swap Agreement

The committee learned since the "swap" agreement, the reimbursement process and budgeting have become easier for counties. Counties have better control over staffing issues and are able to better manage tax revenue requirements. The agreement has resulted in efficiencies to counties for administering economic assistance programs.

The committee received information regarding the estimated fiscal effects of the "swap" agreement on counties and the state. For the 2005-07 biennium, the committee learned counties avoided an estimated $14.28 million of costs due to the agreement. The following schedule details the avoided county costs since 1999:

	1999-2001	2001-03	2003-05	2005-07
Grant costs in excess of administration reimbursement	$870,000	$3,700,000	$6,530,000	$10,300,000
Additional funds for countywide cost allocation plan fee	230,000	70,000	0	0
Additional computer costs in excess of fiscal year 1995 costs adjusted for inflation	890,000	1,650,000	1,240,000	1,230,000
Additional Indian county funds provided in excess of $440,000	1,340,000	2,040,000	2,280,000	2,750,000
Total avoided county expenditures and corresponding additional state costs	$3,330,000	$7,460,000	$10,050,000	$14,280,000

Recommendations

The committee makes no recommendations regarding the study of the economic assistance program responsibilities of the state and counties.

INFANT DEVELOPMENT PROGRAM STUDY

Section 9 of Senate Bill No. 2012 (2007) directed a study of infant development programs, including a review of the state's lead agency agreement, service coordination, staffing, and funding structure, including the adequacy of the funding and the equitable distribution of funds to providers.

Overview

The committee learned the Department of Human Services' infant development program provides home-based, family-focused services to families with eligible children up to three years of age. The program provides information, support, and training for families to assist them in meeting their child's needs. Children are eligible for the infant development program if the child is developmentally delayed or at high risk of becoming developmentally delayed. A child is considered developmentally delayed if the child is performing below age norms by 25 percent or more in two or more of the following areas:

- Cognitive development.
- Gross motor development.
- Fine motor development.
- Sensory processing.
- Communication development (receptive or expressive).
- Social or emotional development.
- Adaptive development.

A child is also considered developmentally delayed if the child is performing below age norms by 50 percent or more in one of the following areas:

- Cognitive development.

- Physical development (including vision and hearing).
- Communication development (including receptive and expressive).
- Social or emotional development.
- Adaptive development.

There are no financial eligibility criteria for receiving infant development services.

The committee learned infant development programs are not facility-based nor do they provide direct therapy for children. The infant development service delivery model provides support to the family of the eligible child and provides training to the family through natural learning opportunities that occur within home and community-based routines. Services are provided in the family's home, child care settings, or other community programs to support the family and child.

The committee learned developmental disabilities case managers employed through the regional human service centers authorize early intervention services, including infant development, family subsidy, and family support services depending on each family's needs and preferences. Other services a case manager will help families identify, access, and coordinate include physical, occupational or speech therapy, specialized medical care, child care, adaptive equipment, and other support services available within the community. Approximately 41 percent of children who receive developmental disabilities case management prior to three years of age continue to receive case management after their third birthday.

The committee learned the Department of Human Services as the lead agency has entered into agreements with other service agencies to identify and provide services to eligible children and their families, including special education in schools and the Department of Public Instruction; State Department of Health; Head Start; child care, medical services, child protective services, foster care, mental health service program; tribal early childhood programs; and family support organizations. Infant development providers in the state include:

1. Northwest Infant Development Program - Williston.
2. Minot Infant Development Program - Minot.
3. Lake Region Kids Program - Devils Lake.
4. Northeast Regional Kids Program - Grand Forks.
5. Southeast Regional Kids Program - Fargo.
6. South Central Regional Kids Program - Jamestown.
7. Bismarck Early Childhood Education Program - Bismarck.
8. Standing Rock Early Childhood Infant Development Program - Fort Yates.
9. KIDS Program - Dickinson.

Number Served and Staffing

The committee learned the North Dakota infant development service delivery model is a transdisciplinary primary coach model with staff that are adult educators/coaches that work with the caregivers. A total of 72.66 full-time equivalent positions are either employed or contracted for by the programs. Infant development programs must employ or have contracts with physical therapists, occupational therapists, speech pathologists, educators, social workers, and other early intervention consultants.

The committee reviewed the following schedule which details the number of infants and toddlers receiving infant development services by region on October 1, 2008:

Region	Number Served
Northwest	39
North Central	79
Lake Region	61
Northeast	148
Southeast	207
South Central	80
West Central	224
Badlands	70
Total	908

The number of children receiving infant development services has increased from 675 during July 2005 to 908 in October 2008. The increase is primarily a result of having more resources available to identify eligible infants and toddlers.

Funding

The committee learned funding for the infant development program is provided from the state general fund and federal Medicaid and federal Individuals with Disabilities Education Act Part C funds. Part C funds, which are used to encourage states to develop early interventions services, are used in the program for children entering the system. The funds provide reimbursement for the first partial month of service.

The committee reviewed the following schedule which details the legislative appropriation for the program and the projected program expenditures for the 2007-09 biennium:

	2007-09 Legislative Appropriation	2007-09 Projected Expenditures
General fund	$3,892,327	$3,600,395
Federal Medicaid funds	6,910,638	6,696,909
Federal Part C funds	82,164	267,840
Total	$10,885,129	$10,565,144

The committee learned private organizations provide infant development services in all human service regions. Prior to the 2007-09 biennium, four human service centers--Northwest, Northeast, Southeast, and South Central--hired staff to provide these services directly.

The committee learned payment rates for infant development services are developed based on a retrospective ratesetting process. This process involves the department setting an interim rate for the upcoming year. Each provider's rate is unique and is dependent on the provider's budgeted allowable costs. Providers submit a statement of budgeted costs to the department each year which is used to establish the interim rate. The final rate is determined at the close of the fiscal year

after each provider reports actual costs for the previous fiscal year. The department reviews the reports to determine whether the reported costs are allowable, reasonable, and client-related. The actual costs are compared to the reimbursements the provider received for the year based on the interim rate. Settlement is then made at the end of the year through either a refund paid to the department by the provider if overpayment occurred or an additional payment to the provider is made by the department if the provider was underpaid for the year. Current interim rates paid to providers for infant development services range from $17.25 to $29.25 per day with a daily average of $24.24.

Other Testimony Received

The committee received other information and testimony regarding the study. Concerns expressed in testimony included:

- Current funding levels for the infant development program make it difficult for providers to hire and retain qualified professional staff.
- Computer equipment used by infant development providers is purchased and maintained by the state. However, the equipment is often outdated and difficult to use.

Recommendations

The committee makes no recommendations regarding the infant development program study.

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 Human Services Committee was assigned responsibility to make a recommendation regarding this contract.

The committee learned the Insurance Commissioner is to pay the cost of the contracted cost-benefit analysis services, and the 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 the insured.
4. The impact of the proposed mandate on the total cost of health care.

North Dakota Century Code Section 54-03-28 provides that any legislative measure mandating health insurance coverage may only be effective for the next biennium and is limited to the public employees health insurance program. For the subsequent Legislative Assembly, the Public Employees Retirement System (PERS) must prepare and request introduction of a bill to repeal the expiration date and expand the mandated coverage to all accident and health insurance policies.

Health Insurance Mandate Analysis Costs

The committee received information regarding agency budgets for health insurance mandate analyses and recent costs incurred. The committee learned the Insurance Department has budgeted $55,000 for the cost-benefit analyses each biennium since 2003. During the 2005 legislative session, two bills were referred for cost-benefit analysis at a total cost of $8,323. In addition, the Insurance Department paid $5,606 for general project work to the contractor during the 2005 legislative session for total payments of $13,929. During the 2007 legislative session, there were no health insurance mandates referred for cost-benefit analysis.

The committee learned PERS has not required the use of a consultant when evaluating legislative measures mandating health insurance coverage. However, if a future analysis does require additional resources, NDCC Section 54-52.1-06.1 provides a continuing appropriation to PERS for consulting services related to the uniform group insurance program.

Insurance Commissioner Recommendation

The Insurance Commissioner recommended that based on proposals received from interested entities, the Legislative Council continue to contract with Milliman, Inc., for cost-benefit analyses during the 61st Legislative Assembly.

Recommendations

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

STATE 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 regarding enrollment statistics and costs associated with the state children's health insurance program (SCHIP) which is known as the Healthy Steps program. The Legislative Council assigned this responsibility to the Human Services Committee.

The committee learned that the 2007 Legislative Assembly provided funding of $20.2 million, of which $4.6 million is from the general fund and $15.6 million is from federal funds for Healthy Steps, for the 2007-09 biennium. Compared to the 2005-07 legislative appropriation, the funding provided is an $8.1 million increase, $1.7 million of which is from the general fund and $6.4 million of which is from federal funds. The Legislative Assembly made a number of adjustments to the funding for Healthy Steps, including adding funding to allow income eligibility disregards similar to the Medicaid program and reducing funding to reflect an anticipated reduction in the cost and caseload/utilization

of the program from the amounts included in the executive budget. In addition, in House Bill No. 1463, the 2007 Legislative Assembly increased Medicaid eligibility for children under 19 years of age from 100 percent to 133 percent of poverty and the SCHIP net income eligibility from 140 percent to 150 percent of poverty. The Medicaid eligibility change was contingent on approval by the federal government. The federal government approved the expansion of the CHIP eligibility level to 150 percent of poverty in June 2008 and the change was effective October 1, 2008.

The committee learned through August 2008, 4,038 children were enrolled in the Healthy Steps program. As a result of the program eligibility expansion to include children within 150 percent of the federal poverty level, an additional 800 children are expected to qualify for the program during the first 12 months under the new eligibility requirements.

MEDICAL ASSISTANCE RECIPIENTS ACCESS TO DENTAL SERVICES REPORT

The 2007 Legislative Assembly approved House Bill No. 1246 providing an appropriation of $444,198, of which $160,000 is from the general fund, to the Department of Human Services for increasing funding for children's dental services under the Medicaid program for the 2007-09 biennium. The bill requires the department to report to the Legislative Council before August 1, 2008, on the status of medical assistance recipients' access to dental services. The Human Services Committee was assigned responsibility to receive this report.

For the 2007-09 biennium, the legislative appropriation for Medicaid dental services, including the $444,198 referred to above, totals $13 million, of which $4.7 million is from the general fund. For the 2005-07 biennium, the Legislative Assembly appropriated $13.3 million, of which $4.7 million was from the general fund for dental services under the Medicaid program. Dental-related expenditures totaled $12.3 million for the 2005-07 biennium.

The committee learned the Department of Human Services has met with the North Dakota Dental Association for the purpose of seeking input regarding the allocation of funds appropriated in 2007 House Bill No. 1246. Dental providers expressed concerns regarding patients who fail to appear for the appointment and the level of reimbursement for services provided. Through June 2008 program expenditures totaled $6.3 million and total biennial expenditures are anticipated to be $14.5 million, $1.5 million more than the $13 million appropriated for the biennium.

IMMUNIZATION PROGRAM TRANSITION

Subsection 3 of Section 2 of 2007 House Bill No. 1435 provides that during the 2007-08 interim, the State Department of Health's Immunization Task Force report periodically to the Legislative Council regarding the impact of the immunization program transition on local public health units and that the State Health Officer provide periodic reports to the Legislative Council regarding the fiscal impact of the transition. The Human Services Committee was assigned responsibility to receive the reports.

Overview

The committee learned that, pursuant to Section 2 of House Bill No. 1435, the Immunization Task Force consists of at least seven members--at least three representing local public health districts, at least three representing private health care providers, and representatives of the State Department of Health. The bill provides that the state transition from a universal-select immunization program to a Provider Choice immunization program. In 2005, due to increasing costs of vaccinating children, North Dakota moved from a universal state in which all vaccines are provided to all children, even those insured, to a universal-select state in which all vaccines are provided to all children eligible for a federal program called Vaccines for Children, which generally includes children that are uninsured, underinsured, Medicaid-eligible, or American Indian, and most vaccines are provided to most insured children.

The committee learned the Provider Choice program is a program to manage and cost effectively pay for all recommended vaccines for all children. Since 2005 significant changes have occurred in childhood immunization programs, including a possible decline in federal funding for immunizations and the introduction of several very expensive, newly recommended vaccines. The Provider Choice program continues the provision of federal vaccines to providers for eligible children and gives providers the choice of purchasing all other vaccines through the State Department of Health where they can achieve lower vaccine costs through multistate, large-volume purchasing agreements. Vaccines for all children will be provided either through the federal Vaccines for Children program or through an individual's health insurance. Some copayments may apply.

The committee learned 2007 House Bill No. 1435 delayed the implementation of the Provider Choice program until December 31, 2007, and provides a $2 million general fund appropriation to pay for the nonfederal vaccine costs until the program is implemented and paid through private insurance companies. Of the $2 million appropriation, $500,000 is available only if the department determines it necessary to continue to purchase vaccines after December 31, 2007. The department estimates expenditures of $1.3 million related to the transition. Therefore, the $500,000 designated for vaccine purchases after December 31, 2007, is not anticipated to be used.

Federal "317" Vaccine Allocation

The committee received information regarding the uses of federal "317" vaccine allocations by the State Department of Health. The committee learned the department receives a yearly allocation of vaccine through Section 317 direct assistance grants. The grants are intended to allow grantees to provide vaccine for populations at the greatest risk for undervaccination and disease. The emphasis has historically been placed on children whose health insurance does not provide for immunizations, but the program may be used to provide

vaccine for all children and adults. Children who do not have health insurance or are eligible for Medicaid receive vaccinations through the federal Vaccines for Children program rather than the "317" program.

Program Transition

The committee learned the immunization transition project required the development of a billing process for local public health units. Two local public health units were chosen as testing sites and completed testing of the billing system in February 2008. On March 31, 2008, all local public health units began billing insurance companies. Local public health units electronically submit information to the University of North Dakota School of Medicine and Health Sciences through the North Dakota immunization information system. The University of North Dakota provides billing services on behalf of the health units, including the collection of insurance copayments and deductibles, and withholds $2 from each vaccination payment for administrative costs. Two local public health units have computer systems that are not interfaced with the North Dakota immunization information system which requires the entry of data in two separate computer systems.

Anticipated Costs

The committee learned the State Department of Health anticipates spending $1.3 million from the general fund appropriated by House Bill No. 1435. Additional costs may be incurred as the department continues to monitor the status of the transition and the needs of the local public health units.

Other Information Received

The committee received additional information regarding the impact of the immunization program transition. Concerns expressed regarding the transition included:

- The difficulty of local public health units in obtaining insurance information.
- The large amount of vaccine required to be stored by local public health units.
- Excessive administrative costs incurred by local public health units for providing immunizations.

TRANSITION ASSISTANCE FOR CHILD CARE PROGRAM REPORT

Section 5 of 2007 Senate Bill No. 2186 provides that the Department of Human Services report to the Legislative Council regarding the transition assistance for the child care program implemented in Section 1 of the bill. The Human Services Committee was assigned responsibility to receive the report.

The transition assistance for child care program is to pay for a portion of the child care expenses for a period of up to six months for families no longer eligible for TANF benefits because of employment earnings. Federal funds totaling $1,491,210 were appropriated to the program for the 2007-09 biennium.

The committee learned the Department of Human Services completed necessary computer programming changes to implement the program in August 2007. Through September 2008, 719 TANF families utilized transitional child care assistance and received benefits of $393,492. Total program expenditures for the 2007-09 biennium are anticipated to be $990,661.

ALTERNATIVES-TO-ABORTION PROGRAM REPORT

The Legislative Assembly approved 2007 Senate Bill No. 2312 which continues the alternatives-to-abortion services program. Pursuant to Section 2 of the bill, the Department of Human Services was to provide a status report regarding the program to the Legislative Council. The Human Services Committee was assigned responsibility to receive the report.

The committee learned the program began in 2005 and provides funds to organizations that provide alternatives-to-abortion services and educate the public about the program. The Legislative Assembly appropriated $500,000 of federal funds for the program during the 2005-07 biennium and appropriated $400,000 of federal funds for the 2007-09 biennium.

The committee learned 882 women received services through providers of alternatives-to-abortion services from July 2007 through September 2008. Information on alternatives to abortion was distributed in September 2007 to higher education institutions and larger high schools in the state. Total program expenditures for the 2007-09 biennium are anticipated to be $301,958.

NURSING EDUCATION CONSORTIUM REPORT

The 2007 Legislative Assembly approved Senate Bill No. 2379 providing for the establishment of a Nursing Education Consortium to establish a mobile clinical nursing simulation laboratory. The bill appropriated $200,000 from the general fund for defraying a portion of the cost of the simulation laboratory. The consortium may receive and spend other funds for the purpose of establishing the simulation laboratory program and other activities of the consortium. The bill requires the Dean of the University of North Dakota College of Nursing to report to the Legislative Council during the 2007-09 biennium on the activities of the consortium. The Human Services Committee has been assigned responsibility to receive this report.

The committee learned the consortium consists of 28 members from education, employers, professional associations, and workforce. The consortium is planning to submit grant proposals to access additional funding. The consortium's strategic plan for 2007-09 includes the following initiatives:

Initiative	Action Plan
Remove obstacles to better meet current and future nursing needs	Obtain additional funding for faculty salaries Provide for appropriate enhancements for nursing faculty, such as dues, licensing costs, research, and teaching support Define specific plans for recruitment and retention of nursing education and clinical faculty

Initiative	Action Plan
Focus on the nursing needs of rural communities	Develop "grow-your-own" resources Develop additional rural clinic sites Enhance school nurse resources Increase simulation laboratory availability for rural students
Develop a collaborative program to develop mobile and stationary simulation laboratories	Strategize continuing needs for stationary and mobile laboratories using best practices Develop case statement for simulation laboratory development Pursue private, foundation, or federal funding for simulation laboratories for North Dakota nursing education

The committee received information regarding the demand for nurses in the state. The committee learned there is currently a minor shortage of registered nurses in the state but supply is expected to meet demand by 2009. The future supply of nurses is expected to increase due to larger enrollments in nursing education programs. However, concern exists regarding the limited availability of nurses in rural areas of the state.

DRUG UTILIZATION REVIEW BOARD REPORT

The Legislative Assembly approved 2007 House Bill No. 1422. Section 2 of the bill provided that during the 2007-08 interim, the Drug Utilization Review Board review the utilization, cost, and effectiveness of the drugs identified in NDCC Section 50-24.6-04(3) relating to mental illness, acquired immunodeficiency syndrome (AIDS), human immunodeficiency virus (HIV), and cancer-related drugs exempt from the prior authorization process. The board was to make recommendations for managing the utilization of these drugs and report semiannually to the Legislative Council regarding its progress and provide a final report by October 1, 2008, of its findings and recommendations for legislative changes. The Human Services Committee was assigned responsibility to receive these reports.

The committee learned federal regulations require each state to establish a drug use review program to assure prescriptions distributed under the Medicaid program are appropriate, medically necessary, and not likely to result in adverse medical results. Membership of the North Dakota Drug Use Review Board is identified in statute and consists of doctors, pharmacists, pharmacy industry representatives, and consumer advocates. The board is to make recommendations regarding drugs to be placed in a prior authorization status and to conduct an annual review of all drugs in a prior authorization status.

The committee reviewed policies and procedures of the Drug Utilization Review Board. The committee learned the board adopted procedures that limit the distribution of certain information to board members. All contact by representatives of the Pharmaceutical Research and Manufacturers of America Association regarding board matters must be made through the board coordinator or the Department of Human Services Medicaid pharmacy program staff.

The committee received information regarding the activities of the board. The committee learned the board made the following recommendations in each drug class:

Drug Class	Recommendation
HIV/AIDS	The board recommends Medicaid should not prior authorize HIV/AIDS medication, and a law need not exist to prohibit action in the future, specifically if a physician prescribed outside the AIDS drug assistance program guidelines.
Oncology	The board recommends prior authorizing antineoplastics and that the board be involved in the prior authorization of certain agents using private insurance as a guideline.
Attention deficit hyperactivity disorder	The board recommends removing the prior authorization exemption for this class, prior authorizing Vyvanse after the Adderall XR trial, and prior authorizing Daytrana.
Antidepressants	The board recommends placing certain selective serotonin reuptake inhibitor medications on prior authorization and, therefore, removing the exemption for the antidepressant class of medications.
Antipsychotics	The board recommends prior authorizing alternate dosage forms and Invega if the exemption was removed from this class of medications.
Anticonvulsants	The board made no recommendation.

OTHER INFORMATION RECEIVED

The committee received information on the Mental Health America of North Dakota 2-1-1 program. The committee learned through July 2008 four state agencies had contracts with the 2-1-1 program during the 2007-09 biennium. In 2007 funding received by the 2-1-1 program from state agencies totaled $25,126. Mental Health America of North Dakota does not charge a fee for entities to be listed in its 2-1-1 database. However, a fee may be charged if services to be provided require special training for staff, extra website or database activities, or specific entity reporting needs.

The committee received updates from the Department of Human Services on the Medicaid management information system project. The committee learned the department is negotiating with the project vendor relating to changes to the project schedule. The projected completion date has been extended due to issues arising with the project vendor. However, there are no anticipated costs associated with updates to the program due to the project delay. In addition, the project contract provides that the vendor will include any federal coding changes in the program.

The committee received information regarding recipient liability within Department of Human Services programs. The committee learned medically needy coverage is available for Medicaid recipients whose incomes are too high to qualify for supplemental security income or TANF programs but who do not have enough income to meet their medical needs. Medically needy coverage requires recipients to spend down their excess income on medical expenses prior to Medicaid paying

any additional medical costs. Medically needy income levels are intended to allow an individual, couple, or family enough money to meet the expenses for shelter, food, utilities, clothing, and other maintenance needs. The following schedule compares the medically needy income eligibility levels to other programs:

Family Size	Medically Needy	Supplemental Security Income	Food Assistance (Supplemental Nutrition Assistance)	Fuel Assistance (LIHEAP)
1	$500	$637	$867	$1,757
2	$516	$956	$1,167	$2,297
3	$666	N/A	$1,467	$2,838
4	$800	N/A	$1,767	$3,378

The committee received information on the estimated cost of increasing the income eligibility levels of the medically needy program from $500 to $720 for a one-person household and $516 to $969 for a two-person household. The committee learned the cost increase for the 2009-11 biennium would be $5.5 million, of which $2 million is from the general fund.

The committee received other information, including information from the Department of Human Services regarding department budget updates, the number of information technology employees, Medicaid prescription drug spending, and the transfer of long-term care beds in the state.

INDUSTRY, BUSINESS, AND LABOR COMMITTEE

The Industry, Business, and Labor Committee was assigned five studies. In addition, the chairman of the Legislative Council assigned to the committee the responsibility to review Workforce Safety and Insurance (WSI) premiums, benefits, and accountability and transparency methods and the results of the WSI consultant reviews of claims processing, human resources, and management areas.

Section 2 of House Bill No. 1299 (2007) directed a study of the regulation and licensing of pharmacists in this state, including an examination of the State Board of Pharmacy, the board's size, the manner of board membership appointment, and whether the board is representative of commercial and noncommercial pharmacists; the state's demographics and the impact changing demographics in rural areas will have on the ability of small, locally owned pharmacies to remain economically viable and of rural residents to access low-cost pharmaceuticals and pharmacy and pharmacists' services; pharmacy ownership restrictions, the relevance of those restrictions in terms of marketplace competition, and the impact of those restrictions on the price and availability of pharmaceuticals and on pharmacy and pharmacists' services; and statutory interplay between the board and the North Dakota Pharmaceutical Association and whether the regulatory function of the board conflicts with the advocacy function of the association.

Section 28 of House Bill No. 1018 (2007) directed a study of wireless providers in the state and how wireless service impacts the business climate in the state.

Section 2 of House Bill No. 1218 (2007) directed a study of the licensure, training, and classroom education requirements for electricians in this state; reciprocity agreements with other states and the effect of those agreements on standards in this state; and the effect of the licensure, training, classroom education requirements, and reciprocity agreements on the availability of qualified electricians in this state.

Section 21 of House Bill No. 1018 directed a study of the organization, powers, duties, and effectiveness of the Department of Commerce, including review of the legislative history leading to the creation of the department; review of the legislative and executive branch expectations in the creation of the department and whether those expectations are being met; evaluation of the effectiveness of the North Dakota Economic Development Foundation in providing a nonpartisan, private sector perspective to the department's approach to the department's duties; evaluation of the organizational structure of the department, including whether the department should include a division of science and technology; and evaluation of the strategic planning process of the department and its effectiveness.

Section 19 of House Bill No. 1018 directed participation in the Department of Commerce Renaissance Zone Conference to review the list of projects in the state which have been undertaken under the renaissance zone program, evaluate whether the projects have positively impacted the renaissance zone communities, consider options for smaller communities to become involved in the renaissance zone program or a similar program, and make recommendations regarding how the program could be improved to further meet the needs of the state and local communities.

The Legislative Council also assigned to the committee the responsibility to receive a report from the Insurance Commissioner on findings regarding insurers' use of modified community rating for health insurance or health benefits coverage policies pursuant to North Dakota Century Code (NDCC) Section 26.1-36.4-06; a report from WSI on recommendations based on the safety audit of Roughrider Industries work programs and the performance audit of the modified workers' compensation coverage program as provided under Section 65-06.2-09; and a report from the Commissioner of Financial Institutions on the outcome of the commissioner's study of how the state's building and loan association and mutual savings bank laws relate to conversions of state credit unions to building and loan associations or mutual savings banks and any proposed legislation the Department of Financial Institutions determined necessary to replace Title 7 as required by Section 7 of Senate Bill No. 2295 (2007).

Committee members were Representatives Rick Berg (Chairman), Bill Amerman, Tracy Boe, Donald L. Clark, Mark A. Dosch, Glen Froseth, Jim Kasper, Darrell D. Nottestad, Gary Sukut, Elwood Thorpe, Don Vigesaa, and Steve Zaiser and Senators Arthur H. Behm, Nicholas P. Hacker, Robert M. Horne, Jerry Klein, and Terry M. Wanzek.

The committee submitted this report to the Legislative Council at the biennial meeting of the Council in November 2008. The Council accepted the report for submission to the 61st Legislative Assembly.

WORKFORCE SAFETY AND INSURANCE REVIEW

Background

In 1919 the Legislative Assembly created the Workmen's Compensation Bureau to provide "sure and certain relief" for work injuries regardless of fault. From 1919 until 1931, the bureau was governed by a commission within the Department of Agriculture and Labor. In 1931 the Legislative Assembly removed the bureau from the Department of Agriculture and Labor and made the bureau a separate agency administered by three full-time commissioners. The governance of the bureau remained under the direction of the commissioners until in 1989 the Legislative Assembly replaced the commissioners with an executive director appointed by the Governor and serving at the pleasure of the Governor. The Legislative Assembly also created a Workers' Compensation Advisory Council, equally representing employers and employees, to advise the bureau.

The 1991-93 biennial report of the Workers' Compensation Bureau revealed that the bureau had an

unfunded liability of over $240 million at the end of fiscal year 1993. The report indicated that the "largest obstacle for fund solvency has been inadequate premium rates to finance the spiraling cost of claims." In response to the financial insolvency of the bureau, in 1995 the Legislative Assembly adopted a number of bills in an attempt to reform the workers' compensation system in the state.

In 1997 the Legislative Assembly adopted House Bill No. 1440, which removed the authority of the Governor to appoint the director of the Workers' Compensation Bureau. The bill also replaced the Workers' Compensation Advisory Council with the Workers' Compensation Board of Directors, which was to be appointed by the Governor from lists of names submitted to the Governor. The bill authorized the board of directors to appoint the director and "[a]ssist the bureau in formulating policies and discussing problems related to the administration of the bureau, while ensuring impartiality and freedom from political influence." Although the structure of the organization remained the same for some time, in 2003 the Legislative Assembly changed the name of the Workers' Compensation Bureau to Workforce Safety and Insurance. The Legislative Assembly also expanded the number of members of the organization's board of directors from 10 members to 11 members. In 2007 the Legislative Assembly adopted House Bill No. 1460, which included a provision that allowed the Governor to reject a list of proposed board members submitted to the Governor.

In April 2007 the director of WSI was charged with misapplication of entrusted property and conspiring to disclose confidential information and was placed upon administrative leave by the board of directors. In October 2007 the Secretary of State approved for circulation an initiated measure to require the Governor to appoint the director of WSI. In January 2008 the WSI Board of Directors authorized the expenditure of over $300,000 for two consulting firms to conduct a review of the WSI claims process and a review of the human resources and management functions of WSI.

In January 2008 the Legislative Council chairman assigned to the committee the responsibility to conduct a review of WSI issues, including:

- Workforce Safety and Insurance premiums, including a review of the treatment of businesses with similar classifications and experience history and a comparison of premium rates to other states in the region.
- Workforce Safety and Insurance benefits for similar injuries in various locations in North Dakota and as compared to benefits in other states in the region.
- Workforce Safety and Insurance accountability and transparency methods.
- The results of pending consultant reviews of WSI regarding the agency's claims review process and human resources and management areas.

Testimony and Committee Considerations

Injured Worker Concerns

The committee received testimony from injured workers and representatives of injured workers. In addition to opening meetings for testimony, the chairman of the committee invited injured workers who had concerns with the handling of their claims to contact the Legislative Council staff to discuss their concerns. Testimony from injured workers generally focused on concerns with respect to independent medical examinations, preexisting conditions, difficulty in dealing with the procedures and processes required in filing claims and a belief that WSI is not responsive to the injured worker, return-to-work programs, and the lack of availability of legal representation for injured workers.

In response to the invitation of the chairman of the committee to contact the Legislative Council staff with concerns relating to WSI, 57 individuals contacted the office. Each individual who visited with the Legislative Council staff and who provided a name and contact information was offered the opportunity to sign a release of information so that the committee could review that individual's workers' compensation claim and discuss the claim with representatives of WSI. The Legislative Council staff also provided each individual with information regarding the continuing jurisdiction review process undertaken by WSI and an application form for that review process. In addition, the Legislative Council staff provided each individual with information regarding the Legislative Council's Workers' Compensation Review Committee if it appeared the individual may be eligible for review of that individual's claim by that committee.

Seventeen individuals signed releases and submitted the releases to the Legislative Council office. At the request of the committee chairman, the Legislative Council staff requested each member of the committee to contact one individual who signed a release so that the committee member could hear the concerns of that individual. Committee members also were given the opportunity to visit with a representative of WSI to attempt to better understand the decision of WSI. Upon completion of their visits with the individuals who signed releases, committee members were asked to report to the committee regarding the concerns of the injured workers.

Several of the injured workers who signed releases or who testified before the committee expressed frustration with the independent medical examination process. An injured worker may be required by WSI to submit to an independent medical examination by a duly qualified doctor designated or approved by WSI. The purpose of the independent medical examination must be for the review of the diagnosis, prognosis, or treatment of the injured worker or for a review of fees. North Dakota Century Code Section 65-05-28 provides that the injured worker may designate a doctor to be present at the examination. If the doctor performing the independent medical examination and the injured worker's doctor disagree with respect to the diagnosis, prognosis, or treatment of the injured worker or the review of fees, WSI is required to appoint an impartial doctor to perform an examination and report to WSI.

Injured workers expressed frustration with the fact that many independent medical examinations are conducted at locations outside the state and by doctors from outside the state. Injured workers expressed concerns regarding whether the independent medical examinations are conducted by qualified medical professionals. In addition, injured workers argued that independent medical examinations by out-of-state medical providers who are paid by WSI should not prevail over treatment decisions made by the doctors who have treated the injured workers.

Testimony by representatives of WSI indicated that independent medical examinations are required infrequently. From July 2006 through December 2007, WSI identified 193 independent medical examinations as being completed. Of that number, 60 were conducted within the state and 82 were conducted within 10 miles of the borders of the state. A representative of WSI testified that it is difficult to find a doctor within the state who is willing to perform a critical review of a colleague's diagnosis or treatment and that it often is difficult to find a doctor who possesses expertise in a particular medical specialty. Therefore, many of the independent medical examinations are performed by out-of-state doctors. It was explained that the reason for the high number of examinations performed within 10 miles of the border of the state was due to the availability of appropriate medical facilities in which to conduct the examinations in border cities such as Moorhead, Minnesota. Information provided by WSI indicated that 58 percent of the independent medical examinations performed between July 2006 and the end of December 2007 resulted in findings favorable to WSI, 26 percent resulted in findings unfavorable to WSI, and 16 percent resulted in mixed findings. Representatives of WSI contended that independent medical examinations were required only when there were concerns with the diagnosis or treatment of the injured worker or when something within an injured worker's claims file did not appear to be right. The October 2008 performance evaluation of WSI conducted by an independent audit firm selected by the State Auditor indicated that WSI has been using independent medical examinations appropriately and effectively.

North Dakota Century Code Section 65-05-15 provides the conditions under which benefits may be paid when a compensable injury combines with a noncompensable injury, disease, or other condition. An injury attributable to a preexisting injury, disease, or other condition, including when the employment acts as a trigger to produce symptoms in the preexisting injury, disease, or condition is not compensable unless the employment of the individual substantially accelerates its progression or substantially worsens the severity of the injury.

A number of injured workers contended that WSI frequently uses a preexisting injury or condition as an excuse to avoid paying benefits for a work injury. It was argued that spinal injuries and repetitive motion injuries were often deemed by WSI to be preexisting conditions. Injured workers contended that years of manual labor contribute to injuries that WSI classifies as preexisting conditions or aggravations of preexisting conditions.

Representatives of WSI testified that determinations of compensability are made based upon medical evidence and medical histories of the injured workers. It also was stated that decisions must be based upon state statute and that WSI is responsible only for work-related injuries and is not a general insurer. Although the most recent performance evaluation of WSI indicated that no claims reviewed appeared to have been inappropriately denied, the evaluation suggested that "North Dakota statute is aggressive in empowering the claims payer to deny claims based on prior injuries or pre-existing conditions."

Many injured workers expressed frustration with WSI claims handling procedures and the responsiveness of WSI. Included among the concerns were difficulty in understanding rights and obligations of the injured worker and a general belief that the WSI claims employees were working against the injured worker rather than trying to help. There also were complaints relating to rude treatment of injured workers by WSI employees and delays in the resolution of claims. In addition, individuals expressed concerns regarding a lack of accountability at WSI due to the governance structure of WSI.

Representatives of WSI testified that WSI provides injured workers information regarding the claims process and the rights and responsibilities of the injured workers. In addition, the committee received information indicating that of the approximately 21,000 claims received each year, WSI approves about 92 percent, about 60 percent of which are approved within two weeks. The committee received data from independent customer service surveys conducted for WSI which indicated injured worker satisfaction with WSI has remained relatively steady since 2000 with scores of approximately 4.3 on a 5-point scale.

The Insurance Commissioner testified that treating WSI like an insurance company could provide accountability. The commissioner proposed making WSI subject to a market conduct examination, a financial examination, and an ongoing financial analysis.

The committee reviewed information regarding initiated measure No. 4, which was placed on the November 2008 general election ballot. The measure, which was approved by the voters, requires the Governor to appoint the director of WSI.

The committee received testimony suggesting that when the director of the agency was an appointee of the Governor, there was a greater degree of political influence over claims decisions. It was argued that the decision to move to a director appointed by the board of directors eliminated much of the political influence on claims decisions and insulated claims handlers and supervisors from political considerations. Representatives of WSI testified that inquiries from elected and appointed officials are handled through a constituency services process and a log is kept to record the contacts. Members of the committee expressed concerns regarding the potential for an increase in political influence of the claims process if the director is appointed by the Governor.

The committee considered a bill draft that would have provided a procedure under which an employee of WSI could file a statement with the director of WSI if the employee believed that a claims decision had been inappropriately made due to political influence. The bill draft would have required the director to investigate the statement and file a report of the investigation with the board of directors and the Legislative Council's Workers' Compensation Review Committee. Proponents of the bill draft argued that providing a procedure for reporting inappropriate political influence would be a means to protect employees of WSI and could serve as a deterrent to political interference in claims handling. A representative of WSI testified that the goal of the bill draft is commendable, but placing the onus on an employee of WSI to file a statement accusing an individual of exerting inappropriate influence is not likely to be an effective tool.

The committee received testimony from injured workers who contended the return-to-work program of WSI is ineffective and forces injured workers back to work too soon or into training and jobs for which they are not suited. North Dakota Century Code Section 65-05.1-01 provides that the goal of vocational rehabilitation is to return a disabled worker to substantial gainful employment with a minimum of retraining, as soon as possible after an injury occurs. Substantial gainful employment must offer the opportunity to restore the worker as soon as practicable and as nearly as possible to 90 percent of the worker's average weekly earnings at the time of the injury, or to 66 2/3 percent of the average weekly wage in the state on the date the rehabilitation consultant's report is issued, whichever is less. Representatives of WSI acknowledged that the return-to-work program likely results in some injured workers being trained for jobs other than what the injured worker would prefer. It also was contended that reality dictates that not every injured worker is physically able to continue in the job or occupation that the injured worker performed before an injury, and that unfortunately not every injured worker will be able to be restored to the injured worker's preinjury earning capacity.

In 1995 the Legislative Assembly changed the statutory provisions relating to the payment of attorney's fees for injured workers. Before the change, the agency was required to pay the attorney's fees for an injured worker following the constructive denial of a claim or a notice of an informal decision. House Bill No. 1208 (1995) provided that the agency was required to pay attorney's fees only when the injured worker prevailed in a dispute. The bill also limited the amount of fees that may be paid. Workforce Safety and Insurance has adopted administrative rules that set forth a fee schedule for the payment of attorney's fees in cases in which the injured worker prevails in an appeal.

The committee received testimony from injured workers and attorneys for injured workers contending that injured workers are not able to afford an attorney to fight an incorrect decision of WSI. It was argued that injured workers often are forced to accept a decision of WSI or accept a settlement offer due to the lack of legal representation. Although the Office of Independent Review was created to provide injured workers an advocate to help resolve a dispute with WSI without having to resort to litigation, injured workers argued the office is not independent and does not help the injured worker.

Members of the committee also expressed concerns regarding the independence of the office and whether the office would be more effective if the office were not tied to WSI. However, others questioned whether the office could be as effective without the close working relationship with the claims handlers and supervisors at WSI. It was contended that the relationship allows for a greater degree of information sharing and open discussion regarding a claim.

A representative of the Office of Independent Review testified that the office attempts to help injured workers understand the basis of a decision by WSI and an understanding of the appeal process. In addition, it was contended the office provides a nonadversarial alternative resolution process. The committee received data indicating that the office has a decision modification rate of approximately 20 percent. If an injured worker uses the office, the injured worker is eligible to receive attorney's fees for prevailing in a claim that is later litigated.

The committee received testimony from injured workers contending that the administrative hearing process is unfair because WSI is able to modify or reject a decision of the administrative law judge. Representatives of WSI provided information to the committee relating to contested claims and litigation rates. The data indicated that over the last six years, WSI generally has issued approximately 32,000 notices of decisions per year. As a result of those decisions, approximately 1,200 orders are issued annually. Over that same time period, approximately 160 requests to 230 requests are made for administrative hearings. The report submitted by WSI indicated that WSI rejected 27 of the decisions of the administrative law judges over the six-year period. The committee also received data indicating that the number of disputed claims and litigated claims in this state is low compared with other states.

Medical Provider Concerns

The committee received testimony from medical providers which indicated that some medical providers may not be accepting patients who have suffered work injuries. The testimony suggested that some doctors were concerned the WSI managed care process interfered with the diagnosis and treatment decisions of doctors and jeopardized the standard of care of the injured workers. In addition, concerns were expressed regarding the WSI medical reimbursement rates and the amount of paperwork required in the handling of workers' compensation claims. Representatives of WSI testified that WSI regularly has met with representatives of medical providers to discuss reimbursement schedules. In addition, it was indicated that there has been discussion regarding the establishment of a preferred provider system.

Workforce Safety and Insurance Employees

The committee held a meeting at WSI and invited employees of WSI to address the committee regarding their concerns. The employees of WSI who testified indicated that, despite the negative publicity that WSI had received, the employees were dedicated to their jobs and to helping the injured workers and employers of the state. The testimony reflected frustration by the employees with comments made publicly that compared WSI employees with Nazis and with other statements that they believed misrepresented the situation at WSI.

Workforce Safety and Insurance Premiums and Financial Reserve

In 2005 the Legislative Assembly adopted House Bill No. 1531, which provided that the discount rate used by WSI in evaluating the financial reserves of WSI may not exceed 6 percent. The bill also required that the level of WSI financial reserves plus surplus must be at least 120 percent but may not exceed 140 percent of the actuarially established discounted reserve. The committee received data indicating that the funding ratio of WSI has not been less than 140 percent of unpaid loss reserve since 1999. To reduce the reserve level to move closer to the statutory limit, the WSI Board of Directors declared premium dividends in 2005, 2006, 2007, and 2008.

The State Auditor testified that the 2007 financial audit of WSI concluded that WSI was in violation of state law and that the financial reserve was about $174 million in excess of the statutory limit. The State Auditor also testified that WSI did not take sufficient action to come into compliance with the law. Representatives of WSI contended that generally accepted accounting principles permit the exclusion of unrealized gains and other statutorily set-aside amounts from the determination of the allowable surplus amount. However, the State Auditor disagreed with the conclusions of WSI and requested an opinion from the Attorney General to attempt to resolve the question.

The committee considered a bill draft to define available surplus for the purposes of calculation of the level of WSI financial reserves. The bill draft, as originally discussed, would have provided that available surplus means earned surplus funds derived from realized net profits, but does not include unrealized capital gains, prepaid assets, and funds allocated or obligated to specific programs or projects. Committee members generally agreed that it is necessary to clarify which funds should be included or excluded from the determination of available surplus. Committee members also generally agreed unrealized capital gains should not be excluded from the calculation of available surplus and that available surplus should include net assets of WSI, but not include funds designated or obligated to programs or projects directed or approved by the Legislative Assembly. Committee members expressed concerns regarding whether the 140 percent upper limit on the level of financial reserves allowed is sufficient. The committee received testimony from a representative of WSI indicating that a reinsurance expert had recommended that the reserve level should be set at 150 percent of the actuarially established discounted reserve.

The committee reviewed financial data indicating that premium rates during the 1980s and early 1990s were insufficient to cover claims costs, which resulted in the insolvency of the workers' compensation fund. It was contended that premiums were kept artificially low for political reasons and that the resulting increases in premium rates in the mid-1990s likely was responsible for a number of businesses failing due to the increased cost of doing business in the state.

The committee reviewed a bill draft to require WSI to establish premium rates annually on an actuarial basis. The initial version of the bill draft considered by the committee would have provided that the statewide rates may not deviate by more than 10 percent from the actuarial indicators for that year. Proponents of the bill draft contended that it is necessary to statutorily mandate that premium rates be established on an actuarial basis to avoid problems similar to those experienced in the 1980s and early 1990s when political considerations, rather than actuarial determinations, guided premium setting. Committee members also generally agreed that it is necessary to provide WSI some flexibility to deviate from the actuarial indicated premium level by a limited amount on an annual basis. However, it also was agreed that the amount of that deviation should be limited so that the financial reserves of WSI could not be significantly reduced by keeping premium rates much lower than the recommended levels.

Reports of Reviews, Audits, and Evaluations

The committee received testimony from the consultants who were contracted to review the WSI claims process and the human resources and management functions of WSI. Marsh USA, Inc., conducted the review of the WSI claims process. Conolly & Associates conducted the review of the human resources and management functions.

The Marsh USA, Inc., report indicated that 475 claims files were randomly selected for review. The review of claims files rated the performance of WSI claims handlers with respect to 14 criteria. The overall scores for WSI exceeded industry standards with respect to new claims processing, timeliness of payments, medical cost containment, and communication. Workforce Safety and Insurance met industry standards with respect to medical only claims processing, investigation, denied or withdrawn claims, disability management, and reserving. The report concluded that opportunities for improvement existed with respect to three-point contacts, subrogation, action plans, and supervision.

The report of Conolly & Associates included several recommendations for changes in the management structure at WSI. Among the recommendations were:

1. Workforce Safety and Insurance's Board of Directors immediately should recruit an interim director to restore trust and faith in the capability of executive management and charge that director to make immediate and necessary executive and senior management employment decisions.

2. Workforce Safety and Insurance's senior management structure should be modified.
3. Human resource leadership must be strengthened and trust and confidence restored in that function.
4. The internal audit function must be reviewed to reestablish its independence and objectivity and restore its trustworthiness within WSI.
5. Workforce Safety and Insurance should adopt management performance benchmarks to measure continuously its effectiveness in terms of benefit delivery and level of benefits in comparison to other states.
6. Executive management of WSI should closely monitor claims issues in relation to evidence-based medicine and degenerative disease and aggravation issues.
7. Hardship cases should be referred to the director for review.
8. Workforce Safety and Insurance should restructure its review, hearing, and appeal process.
9. The WSI Board of Directors must increase mandatory meetings and board compensation.
10. Workforce Safety and Insurance should seek to become licensed and subject to examination and regulation by the Insurance Commissioner.

The committee also reviewed the State Auditor's followup report of the status of implementation of recommendations from the 2006 performance audit of WSI. That report indicated WSI had fully implemented 19 recommendations, partially implemented 36 recommendations, and not implemented 3 recommendations. Two recommendations were found to be no longer applicable. Workforce Safety and Insurance did not concur with the status of seven of the recommendations.

The committee reviewed the 2008 WSI performance evaluation report, which was prepared by an independent certified public accounting firm. The evaluation considered nine elements of the operations of WSI. The report of the evaluation included 46 recommendations. Workforce Safety and Insurance concurred with all but one of the recommendations. Although the committee had received testimony alleging that WSI had mishandled hundreds or thousands of claims, the evaluation, in its review of a random sampling of 250 claims, found no evidence of inappropriate handling of claims. However, the report suggested the law in this state relating to preexisting conditions was likely more conservative than other states.

It was contended that WSI has been subject to more audits, evaluations, and reviews than any other state entity. The committee received testimony from representatives of WSI indicating that WSI has been subject to 15 audits, evaluations, and reviews since 2004, 5 of which were being conducted in 2008. Representatives of WSI estimated that over 9,300 employee hours were devoted to responding to audits, evaluations, and reviews during the period beginning October 1, 2007, and ending September 30, 2008.

The committee considered a bill draft to require that the biennial performance evaluation of WSI include performance measurements, including a review of trends in workplace injuries; whether claims are being handled fairly and efficiently; whether safety and loss prevention programs are effective in reducing claims and the severity of claims; whether injured workers, employers, and service providers are satisfied with the services of the organization; whether litigation rates and the number of contested claims are appropriate as compared with other workers' compensation programs or systems; and whether premiums are appropriate and reserve levels are adequate. Proponents of the bill draft contended that although several audits, evaluations, and reviews of the operations of WSI have been performed, policymakers need regular, specific performance measurements to accurately evaluate the effectiveness of WSI.

Mutualization of State Workers' Compensation Funds

The committee received reports from representatives of workers' compensation insurance carriers from Nevada and West Virginia. A state workers' compensation fund was created in Nevada in 1913. The fund experienced financial difficulties that ultimately led to the transition from a monopolistic state fund to a privatized system. The committee received testimony stating that, despite significant medical inflation from 1983 through 1987, workers' compensation rates in Nevada were not raised and the state fund became insolvent. The state fund was transformed into a private mutual insurance company in 1999. In 2007 the company demutualized and distributed $850 million to its policyholders. In West Virginia the state fund that was created in 1913 became insolvent with an unfunded liability of over $3 billion. In 2007 the transition from a monopolistic state fund system was initiated through the creation of a monopolistic mutual insurance company. Later the West Virginia workers' compensation market also was opened to competition. Representatives from both Nevada and West Virginia testified that mutualization of the state funds has led to lower premiums and improvements in claims handling services.

The committee considered a resolution draft to direct the Legislative Council to study the governance structure of WSI and determine the feasibility and desirability of mutualization of WSI. Proponents of the resolution draft contended that a study of the structure of governance at WSI may be necessary as a result of initiated measure No. 4. In addition, they argued that the information provided with respect to the mutualization and privatization of the state funds in Nevada and West Virginia indicated that the transitions in those states resulted in improved claims handling and a decrease in costs.

Discretionary Expenditures

The committee reviewed information relating to expenditures by state agencies and institutions for promotional purposes and for the payment of professional dues and memberships. Information provided to the committee indicated that a number of state agencies and institutions have the authority to expend public funds for promotional purposes pursuant

to a fiscal policy adopted by the Office of Management and Budget. In addition, the committee was informed that many state agencies and institutions expend public funds to pay service club and other membership dues for officers and employees of the agencies and institutions. A representative of the State Auditor's office informed the committee that the State Auditor would be providing additional information relating to this topic to the Legislative Council's Employee Benefits Programs Committee.

Recommendation

The committee recommends House Bill No. 1035 to provide that the level of financial reserves plus available surplus of WSI may not exceed 150 percent of the actuarially established discounted reserve. The bill excludes from the calculation of available surplus any funds designated or obligated to specific programs or projects pursuant to a directive or specific approval by the Legislative Assembly.

The committee recommends House Bill No. 1036 to require WSI to establish premium rates annually on an actuarial basis. The bill provides that the statewide average premium rate level may not deviate by more than 5 percentage points from the recommended actuarial indicated premium level for that year.

The committee recommends House Bill No. 1037 to require that the biennial independent performance evaluation of WSI address performance measurements, including a review of trends in workplace injuries; whether claims are being handled fairly and efficiently; whether claims or premium decisions have been subject to inappropriate political influence; whether safety and loss prevention programs are effective in reducing claims and the severity of claims; whether injured workers, employers, and service providers are satisfied with the services of the organization; whether litigation rates and the number of contested claims are appropriate as compared with other workers' compensation programs or systems; and whether premiums are appropriate and reserve levels are adequate.

The committee recommends House Concurrent Resolution No. 3002 to provide for a Legislative Council study of the governance structure of WSI and determination of the feasibility and desirability of mutualization of WSI.

PHARMACY AND PHARMACIST REGULATION STUDY

Background

North Dakota Century Code Chapter 43-15 governs the regulation of pharmacists and pharmacies.

State Board of Pharmacy

North Dakota Century Code Section 43-15-03 provides for a State Board of Pharmacy consisting of five members appointed by the Governor upon the recommendation of the North Dakota Pharmaceutical Association. The individuals appointed to the board must be licensed pharmacists and must be members of the North Dakota Pharmaceutical Association. The term of office of members of the board is five years.

North Dakota Century Code Section 43-15-06 requires the board president to be a member of the board but provides that the secretary and treasurer do not have to be members of the board. The board is required to hire a pharmacist as the full-time executive director.

North Dakota Pharmaceutical Association

North Dakota Century Code Section 43-15-13.2 provides that the North Dakota Pharmaceutical Association consists of every person:

1. Who has secured a current annual license to practice pharmacy in this state.
2. Who has paid an annual membership fee directly to the association as determined and permitted by the association and who does not hold a current license to practice pharmacy in this state.

North Dakota Century Code Section 43-15-30 provides that licensure as a pharmacist by the board entitles the person so licensed to a one-year membership in the North Dakota Pharmaceutical Association.

North Dakota Century Code Section 43-15-13.3 provides that the members of the association who have secured a current annual license to practice pharmacy in this state are entitled to all the rights and privileges of the association and may vote, serve as an officer or director of the association, and participate in all the meetings of the association. The members of the association who have not secured a current annual license to practice pharmacy are entitled to all the rights and privileges of the association, except that they may not vote at the meetings or serve as an officer or director of the association.

North Dakota Century Code Section 43-15-13.4 mandates that the association is to receive 50 percent of the license renewal fees received by the board. The section allows the association to use the funds for payment of expenses of the association, including continuing pharmaceutical education, pharmacist discipline, the impaired pharmacist program, matters related to pharmacist registration standards, professional service standards, and general operating expenses.

Pharmacy Operation

North Dakota Century Code Section 43-15-32 requires every store, dispensary, pharmacy, laboratory, or office selling, dispensing, or compounding drugs, medicines, or chemicals, or compounding or dispensing prescriptions of medical practitioners in the state, and every business carried on under a name which contains the words "drugs," "drugstore," or "pharmacy," or which is described or referred to in such terms by advertisements, circulars, posters, signs, or otherwise, to be under the charge of a registered pharmacist.

North Dakota Century Code Section 43-15-34 prohibits any person from opening, establishing, operating, or maintaining a pharmacy in the state without obtaining a permit from the board. Section 43-15-34.1 requires an out-of-state pharmacy that ships or delivers a dispensed prescription drug or legend drug into the state to hold a pharmacy permit issued by the board.

The section also provides that the part of the pharmacy operation dispensing the prescription for a resident of this state abide by state law and the rules of the board.

North Dakota Century Code Section 43-15-35 sets forth the requirements to operate a pharmacy in the state. The section requires that the management of a pharmacy must be under the personal charge of a pharmacist licensed in this state. In addition, the section establishes pharmacy ownership requirements. Those requirements have been the subject of litigation twice since the adoption of the requirements in 1963.

In 1963 the Legislative Assembly adopted legislation that provided that an applicant for a permit to operate a pharmacy must be a registered pharmacist or a partnership, each active member of which is a registered pharmacist, or a corporation or association, the majority of stock of which is owned by registered pharmacists actively and regularly employed and responsible for the management, supervision, and operation of the pharmacy. The legislation included an exception for the holder of a permit on July 1, 1963, if otherwise qualified to conduct the pharmacy, for so long as the permitholder continues operations and renews the permit. The legislation also included an exception for hospital pharmacies furnishing service only to patients in the hospital. The legislation, which was codified as NDCC Section 43-15-35, faced a constitutional challenge that was ultimately decided by the United States Supreme Court in 1973 and another legal challenge in 1996-97.

In 1971 Snyder's Drug applied for a permit to operate a pharmacy in a portion of a Red Owl store in Bismarck. The State Board of Pharmacy denied the permit because the existing facilities of the applicant did not meet the standards required by the board and because the applicant failed to comply with NDCC Section 43-15-35(5), which required that the majority of the applicant's stock be owned by registered pharmacists in good standing, who are actively and regularly employed in and responsible for the management, supervision, and operation of the pharmacy. Snyder's Drug appealed the decision of the board to the district court arguing that Section 43-15-35 was unconstitutional in that it violated the equal protection and the due process clauses of the 14th Amendment to the United States Constitution and Sections 11 and 20 of the Constitution of North Dakota.

The district court granted summary judgment in favor of Snyder's Drug, concluding that NDCC Section 43-15-35 violated the equal protection and the due process clauses of Section 1 of the 14th Amendment to the United States Constitution and Sections 11 and 20 (currently Article I, Sections 21 and 22) of the Constitution of North Dakota. The State Board of Pharmacy appealed the decision of the district court to the North Dakota Supreme Court.

In *Snyder's Drug Stores, Inc. v. North Dakota State Bd. of Pharmacy*, 202 N.W.2d 140 (N.D. 1972), the North Dakota Supreme Court affirmed the district court decision as it related to the unconstitutionality of NDCC Section 43-15-35 under the due process clause of the 14th Amendment to the United States Constitution. In making its decision, the North Dakota Supreme Court relied upon a 1928 decision of the United States Supreme Court. In that case, the United States Supreme Court held that a Pennsylvania law that required that a pharmacy be 100 percent owned by pharmacists was unconstitutional. The United States Supreme Court determined that a state may not "under the guise of protecting the public, arbitrarily interfere with private business or prohibit lawful occupations or impose unreasonable and unnecessary restrictions upon them" in *Liggett Co. v. Baldridge*, 278 U.S. 105 (1928).

The State Board of Pharmacy appealed the decision of the North Dakota Supreme Court to the United States Supreme Court. In *North Dakota Bd. of Pharmacy v. Snyder's Drug Stores, Inc*., 414 U.S. 156 (1973), the United States Supreme Court overruled the *Liggett* decision and reversed the decision of the North Dakota Supreme Court. The case was then remanded back to the North Dakota Supreme Court.

Upon remand, the North Dakota Supreme Court upheld the constitutionality of the law in *Snyder's Drug Stores, Inc. v. North Dakota State Bd. of Pharmacy*, 219 N.W.2d 140 (N.D. 1974). The North Dakota Supreme Court determined that the reasons given in support of the ownership law were reasonable. Among the reasons given in support of the law were:

1. The professional and ethical standards of pharmacy demand the pharmacist's concern for the quantity and quality of stock and equipment. A drug which has deteriorated because of improper storage facilities can be a detriment to public health. A drug not in stock poses a threat to the individual who needs it now. Decisions made in conjunction with the quantity and quality of stock and equipment by nonregistered-pharmacist owners could be detrimental to the public health and welfare.
2. Supervision of hired pharmacists by registered-pharmacist owners would be in the best interests of public health and safety.
3. Responsibility for improper action could be more readily pinpointed when supervision is in registered-pharmacist owners.
4. The dignity of a profession and the morale and proficiency of those licensed to engage therein is enhanced by prohibiting the practitioner from subordinating himself to the direction of untrained supervisors.
5. If control and management is vested in laymen unacquainted with pharmaceutical service, who are untrained and unlicensed, the risk is that social accountability will be subordinated to the profit motive.
6. The term "pharmacy" was intended to identify a particular type of establishment within which a health profession is practiced and, thus, was intended to be more than a mere means of making a profit. He who holds the purse strings controls the policy.
7. Doctor-owned pharmacies with built-in conflict-of-interest problems could be restricted.

The pharmacy ownership law was challenged again in the mid-1990s. In 1996 Medcenter One decided to expand its pharmacy at the hospital to make pharmacy

sales to the general public. The State Board of Pharmacy, through its legal counsel, informed Medcenter One that the "exemption for community/retail pharmacies set forth in N.D.C.C. 43-15-35 would [not] be available to Medcenter One Hospital Pharmacy." The opinion of the board's legal counsel concluded that "[b]efore July 1, 1963, there were two type[s] of pharmacy permits for two types of pharmacy practice, one for hospitals serving only patients in that hospital and one for community/retail pharmacies. When N.D.C.C. 43-15-35 was amended effective July 1, 1963, the legislature recognized that distinction in permits and pharmacy practice and codified that distinction by providing that N.D.C.C. 43-15-35 does not apply to hospital pharmacies furnishing service only to patients in such hospital or to community/retail pharmacies holding a permit on July 1, 1963." Although the Bismarck Hospital Pharmacy was the beneficiary of the hospital exemption because that was the type of pharmacy practice it was engaged in on July 1, 1963, the opinion concluded that "Medcenter One Pharmacy is not now (32 years later) entitled to an additional exemption for community/retail pharmacies, because it was not engaged in that type of practice on July 1, 1963."

Medcenter One sought and received a declaratory judgment from the district court which concluded that the unambiguous language of NDCC Section 43-15-35 did not differentiate between hospital and retail pharmacy permits and held that Medcenter One, as the continuous holder of a permit since before 1963, was exempt from the pharmacist-ownership requirements. The North Dakota Supreme Court affirmed the decision in *Medcenter One v. North Dakota State Bd. of Pharmacy*, 561 N.W.2d 634 (N.D. 1997). The North Dakota Supreme Court stated that Section 43-15-35 clearly and unambiguously describes two exemptions to the pharmacist-ownership requirements. The first exemption is for pharmacies that held permits on July 1, 1963, and have not discontinued operations or failed to renew their permit. The court concluded the plain language of that exemption applies to all pharmacy permitholders on that date, not just retail or nonhospital pharmacies. The second exemption applies to hospital pharmacies furnishing service only to patients in the hospital. The court concluded if the Legislative Assembly had intended the first exemption only to apply to retail or nonhospital pharmacies, it would have limited that exemption with appropriate language.

North Dakota Century Code Section 43-15-35, as amended by the Legislative Assembly in 2007, retains the pharmacist ownership requirements. House Bill No. 1299 (2007) created an exception from the requirements for an applicant for a permit to operate a pharmacy which is a hospital if the pharmacy for which the hospital seeks a permit to operate is a retail pharmacy that is the sole provider of pharmacy services in the community and is a retail pharmacy that was in existence before the hospital took over operations. A hospital operating a pharmacy under that exception may operate the pharmacy at any location in the community. House Bill No. 1350 (2007) established an exception from the ownership requirements for an applicant for a permit to operate a pharmacy which is the owner of a postgraduate medical residency training program if the pharmacy is colocated with and is run in direct conjunction with the postgraduate medical residency training program.

2007 Legislation

In addition to the two bills that created exceptions to the pharmacist ownership requirements, two other bills were considered by the Legislative Assembly which related to the State Board of Pharmacy and the North Dakota Pharmaceutical Association. House Bill No. 1148 (2007), which failed, would have repealed the statutory provisions relating to the North Dakota Pharmaceutical Association and would have removed the requirement that the members of the State Board of Pharmacy be appointed upon the recommendation of the association. The bill also would have prohibited the board from requiring that a pharmacist be a member of any association as a requirement for initial licensure or for license renewal and would have prohibited the board from using licensure fees to pay a pharmacist s membership dues to a professional association. Senate Bill No. 2387 (2007), which also failed, was identical to House Bill No. 1148.

Testimony and Committee Considerations

State Board of Pharmacy and the North Dakota Pharmaceutical Association

The committee received testimony regarding the relationship between the State Board of Pharmacy and the North Dakota Pharmaceutical Association.

Representatives of health care facilities and hospital pharmacists expressed opposition to the mandatory association membership for pharmacists licensed in the state. The only other professional association in which membership is mandatory for licensees is the State Bar Association of North Dakota. A representative of the North Dakota Healthcare Association contended that the State Board of Pharmacy should be restricted to licensing and regulatory activities while the main functions of a professional association are to provide advocacy, communication, data collection, and education. Representatives of hospital pharmacists contended that because the North Dakota Pharmaceutical Association receives 50 percent of the pharmacist licensing fees, a conflict of interest is created and the leadership of the board and the association frequently act in concert and do not represent the interests of hospital pharmacists.

Representatives of the State Board of Pharmacy and the North Dakota Pharmaceutical Association testified that the board and the association work closely to protect the interests of consumers in the state as well as cooperate with the North Dakota State University College of Pharmacy to provide training and educational opportunities for pharmacists. The executive director of the board testified that the integration with the association was statutorily adopted in 1989, with little opposition, to address financial issues experienced by the association and to encourage more involvement in the association by pharmacists. Because of the

relatively small number of pharmacists in this state, it was argued that mandatory membership is necessary to sustain the association and to get involvement from all pharmacists. With respect to the membership of the board, the executive director indicated that the board frequently has included a hospital pharmacist. In addition, the executive director stated that the board has proposed adding two members to the board, a registered pharmacy technician and a public member. The executive director also stated that the board has a conflict of interest policy and that no conflict exists between the board and the association.

A representative of the North Dakota Pharmaceutical Association testified that the association and the board have agreed to allow pharmacists to opt-out from the association. A pharmacist electing to opt-out may request the return of the $100 portion of the $200 licensure fee that is forwarded to the association. However, under the law, each licensed pharmacist remains a member of the association. The representative of the association testified that the association attempts to be inclusive and seeks the participation of all licensed pharmacists regardless of whether a pharmacist works in a hospital or a retail pharmacy.

The committee received information from a representative of the State Auditor's office which indicated that the approximately $1 million reserve held by the State Board of Pharmacy was equal to about four years of operating revenue for the board. Although the total amount was quite high compared with other boards, the number of years of operating revenue was not out of line with the amounts held by other boards.

The committee considered a bill draft to eliminate the statutory connection between the State Board of Pharmacy and the North Dakota Pharmaceutical Association. The bill draft also added a registered pharmacy technician and a public member to the State Board of Pharmacy and reduced the maximum amount that the board may charge for an annual license from $200 to $100. Proponents of the bill draft argued that membership in a professional association should be voluntary and that removing the statutory connection between the board and the association would eliminate concerns with respect to conflicts of interest.

Pharmacy Operation

The committee received testimony from representatives of the State Board of Pharmacy and the North Dakota Pharmaceutical Association urging the retention of the pharmacy ownership restrictions. In addition, several retail pharmacists argued that the ownership restrictions benefit the consumers of the state by contributing to a higher level of service and a guarantee of pharmacy access in rural areas. Pharmacists from rural communities stated that competition from chain store pharmacies would likely result in the closing of rural pharmacies because the chain stores could use loss leaders to bring customers into the stores. Although large chain stores have offered $4 generic prescriptions, independent community pharmacists contended that the $4 offers were simply a marketing gimmick and that independent pharmacies in the state likely are able to match that price for many prescriptions. In addition, the committee was presented data indicating that the average price per prescription in this state is significantly lower than the national average. However, they argued that it would be difficult to compete with the marketing of the large chain stores. Independent community pharmacists contended they provide a higher level of service to their customers and are able to take more time to examine the needs of their customers than pharmacists working for the large publicly traded chain stores that are profit-driven.

Representatives of hospitals and hospital pharmacies testified that the ownership restrictions prevent hospitals from providing a full range of services to patients and reduces access to pharmacies in rural areas. They also argued a pharmacist practicing in a hospital setting has no less ability or concern for a patient than a retail pharmacist and provides an equally high level of service to patients.

Representatives of Wal-Mart and Walgreens argued that the ownership restrictions are unfair to North Dakota consumers and cause consumers in this state to pay more for prescription drugs than consumers in other states. According to a study presented by a representative of North Dakotans for Affordable Healthcare, repealing the ownership restrictions would save consumers and health insurers millions of dollars in prescription drug costs, which could generate nearly another $50 million in additional consumer spending, create additional jobs, and generate additional tax revenue for the state. It was also argued that chain store pharmacists provide services equivalent to independent pharmacists.

The committee received testimony from an individual who questioned why he is unable to purchase $4 generic drugs from a chain store pharmacy in Fargo, but can drive across the bridge to Minnesota to purchase the drugs at a lower price. He argued the pharmacy ownership restrictions are archaic and unfair to consumers in this state. In addition, he contended that a significant amount of money is leaving this state through the purchase of cheaper prescription drugs in other states.

Although committee members were concerned that consumers in this state have access to affordable prescription drugs, there also was concern regarding the impact on independent pharmacies and rural pharmacies if the pharmacy ownership restrictions were repealed. Despite receiving a significant amount of information regarding the financial impact of repealing the ownership restrictions, questions remained regarding the actual impact on the state. Committee members agreed that the committee could reach no consensus on the issue and that the issue would be discussed extensively during the 2009 legislative session.

Recommendation

The committee recommends Senate Bill No. 2039 to eliminate the statutory integration of the State Board of Pharmacy and the North Dakota Pharmaceutical Association, to add two members to the State Board of

Pharmacy--a registered pharmacy technician and a public member, and to reduce the maximum amount the State Board of Pharmacy may charge for an annual pharmacist license from $200 to $100.

WIRELESS STUDY

Background

2007 Legislative Proposal

Following a study by the Legislative Council's Economic Development Committee during the 2005-06 interim, the Legislative Council recommended House Bill No. 1027 (2007), which included provisions that would have provided a sales tax exemption for the gross receipts from sales of wireless service provider equipment that is an integral part of a new or expanding wireless service provider. The bill failed to pass.

Wireless Industry Growth

Statistics from the Federal Communications Commission (FCC) indicate the number of mobile wireless subscribers in the United States has increased from 92,000 in 1984 to over 217,000,000 on June 30, 2006. By June 2005 the percentage of wireless subscribers per 100 population in the United States exceeded the percentage of wire telephone lines. The FCC also reports that the number of wireless subscribers in North Dakota has increased from 388,609 in June 2005 to 481,655 in June 2006. In 2006 the Public Service Commission reported that the number of wireless accounts had surpassed the number of traditional wire telephone lines in the state. According to the Commission on International Trans-Regional Accreditation, the international wireless association, the current estimated number of wireless subscribers in the United States is over 245,000,000. The Commission on International Trans-Regional Accreditation also reports that by the end of 2006, there were over 195,000 cell sites in the United States.

Universal Service Fund

In 1996 the United States Congress adopted the Telecommunications Act of 1996 to require interstate telecommunications carriers to contribute to a Universal Service Fund to subsidize telephone service to low-income households and rural and high-cost areas. During the first 10 years of the existence of the Universal Service Fund, over $44 billion was collected as a result of surcharges assessed on consumers' telephone bills. Distributions from the Universal Service Fund support four purposes--high-cost areas, low-income households and individuals, schools and libraries, and rural health care. A majority of the distributions have been for the purpose of high-cost support. In 2006 approximately $4.1 billion was distributed through the high-cost support program. Under the high-cost support program, funds are distributed directly to telecommunications providers that operate in high-cost areas. Distributions under the high-cost support program are made to providers on a per subscriber basis and may be made to landline and wireless providers. Records of the FCC indicate that the share of distributions to wireless carriers increased from 3.3 percent in 1997 to approximately one-third of the total by early 2006.

High-cost payments to providers for subscribers in this state increased from about $21 million in 1998 to nearly $80 million in 2006. According to the 2006 FCC *Monitoring Report on Universal Service*, Western Wireless was the recipient of the largest share of payments in North Dakota for 2003, 2004, 2005, and 2006. The report indicates that Western Wireless received $17,824,152 in payments in 2006. The North Dakota provider receiving the second largest amount of payments for 2006 was Northwest Dakota Cellular of North Dakota LP with payments of $7,275,264. Two other carriers received over $5 million in payments in 2006--BEK Communications Cooperative ($5,167,026) and SRT Communications, Inc. ($5,003,316).

Public Service Commission Role

Although the Public Service Commission has no specific regulatory authority over wireless providers operating in the state, the commission has launched a program designated as the *Wireless Outreach Initiative: Zap the Gap/Connecting Consumers*. After launching the initiative in 2005, the commission held forums throughout the state regarding wireless service and held a statewide wireless conference in September 2005. The commission describes the *Zap the Gap* portion of the initiative as being designed to:

1. Encourage wireless investment in North Dakota, especially currently underserved areas through the collection of information from consumers to determine areas where there is demand but low wireless coverage.
2. Provide a clearinghouse of useful planning information for wireless companies, including approximations of the number of wireless telephones per capita in different counties in the state, traffic counts on major roads, and lists of suitable structures for wireless antennas.
3. Help facilitate discussions between communities that want wireless service and providers that may be able to fill the gap.
4. Identify strategies to advocate the state's interests in wireless matters with other government agencies.

The *Connecting Consumers* portion of the initiative is described by the commission as being designed to:

1. Help consumers with wireless questions and concerns that they may have with their current service.
2. Assist consumers by reserving an e-mail address for consumers wishing to contact the commission with questions and concerns over wireless telephone issues.

Testimony and Committee Considerations

The committee received testimony from representatives of the wireless industry indicating that the wireless service providers have made significant financial investments in the state over the last several years. Representatives of Verizon Wireless provided data indicating that the company invested approximately

$130 million in building its network in this state since 2001. A representative of SRT Wireless testified that the business has invested over $21 million in wireless development in its service area and has plans to continue to expand its service through the addition of more tower sites. A representative of Alltel testified that the company invested approximately $80 million in the state between 2005 and the middle of 2007.

The committee received testimony from a representative of the Department of Commerce regarding the impact of wireless service in the state upon business development. To compete in the global market, key industries in the state such as agriculture, energy development, information technology, and tourism rely heavily upon the workforce and customers being able to have access to wireless communications throughout the state. Because of the increase in oil development in the western portions of the state, demand for wireless service and broadband access has increased substantially during the last few years.

Committee members expressed concerns that the lack of wireless service and broadband service in rural areas of the state hindered or discouraged economic development in those areas and may discourage young people from moving to or staying in rural areas. Although the rural nature of the state poses some problems with respect to the expansion of wireless service in the state, representatives of the wireless carriers contended that wireless and broadband services in this state are comparable with services provided in other states. The representatives of the wireless carriers indicated that expansion and enhancement of services in this state will continue as long as regulatory barriers, such as local ordinances restricting the building of towers, are minimized. The committee was assured that the merger of Alltel with Verizon Wireless would not affect the cost or availability of wireless service in the state or the continued expansion and enhancement of wireless services in the state.

The committee received testimony from a member of the Public Service Commission regarding activities of the Public Service Commission which are intended to aid the expansion of wireless service in the state. The commissioner testified that the commission has maintained a good relationship with representatives of wireless carriers and has encouraged wireless carriers to expand coverage in areas of the state that have demonstrated a need for additional coverage.

The committee considered a bill draft to provide a sales and use tax exemption for equipment used in telecommunications infrastructure development. Proponents of the bill draft contended that additional investment in wireless infrastructure in the state is needed and a sales tax exemption would demonstrate to wireless providers that the state supports expansion of the businesses in the state.

Recommendation

The committee recommends Senate Bill No. 2040 to provide a sales and use tax exemption for equipment used in telecommunications infrastructure development.

LICENSURE, EDUCATION, AND TRAINING OF ELECTRICIANS STUDY

Background

Licensure Requirements

North Dakota Century Code Chapter 43-09 provides that the State Electrical Board is responsible for licensing electricians. The State Electrical Board consists of five members appointed by the Governor. Section 43-09-09 requires any person undertaking or offering to undertake with another to plan, lay out, supervise, install, make additions, make alterations, or make repairs, in the installation of wiring, apparatus, or equipment for electric light, heat, or power to apply to the board for a license. The board is required to examine applicants and issue licenses to applicants that meet the qualifications established for that class of licensure.

North Dakota Century Code Section 43-09-11 establishes three classes of licensure and provides the experience and training requirements for those classes. That section provides that an applicant for licensure as a master electrician must have completed one year's experience as a licensed journeyman electrician. The experience requirement for an applicant for a journeyman electrician license, as amended by the Legislative Assembly in 2007, mandates completion of 8,000 hours' experience, which may not be obtained in fewer than three years. An applicant for licensure as a journeyman electrician who registers with the State Electrical Board as an apprentice after January 31, 2008, must have either successfully completed apprenticeship and training approved by the federal Bureau of Apprenticeship and Training and completed 8,000 hours' experience in installing and repairing electrical wiring, apparatus, and equipment or successfully completed an appropriate course of study, which may not be less than two years or the equivalent of two years, at a board-approved institution of higher education and completed 8,000 hours' experience. An applicant for licensure as a Class B electrician must have 18 months' experience in farmstead or residential wiring.

North Dakota Century Code Section 43-09-13.1 requires an apprentice electrician to register with the State Electrical Board within the first six months of employment. That section limits an apprentice electrician to working on installations only under the personal supervision of a licensed electrician. Under administrative rules adopted by the board, an electrical contractor is required to maintain records of all employees providing electrical work for that electrical contractor.

A license issued to an electrician is valid for one year and may be renewed upon payment of the license fee and proof of successful completion of continuing education as prescribed by the board but not to exceed 16 hours each biennium.

North Dakota Century Code Section 43-09-20 limits the scope of work of a Class B electrician to the installation of farmstead electrical wiring or residential electrical wiring in one or two family dwellings located in municipalities of 2,500 or fewer population, and the installation of electrical equipment, appliances, and

apparatus used on farmsteads and one or two family residences in those municipalities.

North Dakota Century Code Section 49-09-25 authorizes the State Electrical Board to grant licenses to licensed electricians from any other state if that state similarly licenses electricians from this state and the other state has licensing qualifications equal to the qualifications required in this state.

Electrician Licensing in Bordering States

Under Minnesota law, an applicant for licensure as a journeyman electrician must have completed four years of training. However, the Minnesota Board of Electricity is authorized to provide for the allowance of one year of experience credit for successful completion of a two-year post-high school electrical course approved by the board. An applicant for a license as a master electrician must be a graduate of a four-year electrical course at an accredited college or university; have had at least one year's experience, acceptable to the board, as a licensed journeyman; or have had at least five years' experience, acceptable to the board, in planning for, laying out, supervising, and installing wiring, apparatus, or equipment for electrical light, heat, and power. Minnesota law also provides for the licensure of a power limited technician. To be licensed as a power limited technician, an individual must be a graduate of a four-year electrical course at an accredited college or university; or must have had at least 36 months' experience, acceptable to the board, in planning for, laying out, supervising, and installing wiring, apparatus, or equipment for power limited systems. However, the board may by rule provide for the allowance of up to 12 months (2,000 hours) of experience credit for successful completion of a two-year post-high school electrical course or other technical training approved by the board. Minnesota law requires that a master electrician must directly supervise the work of a power limited technician.

Under Montana law, an applicant for licensure as a journeyman electrician must have completed at least four years of apprenticeship in the electrical trade or four years of legally obtained practical experience in the wiring for, installing, and repairing of electrical apparatus and equipment for light, heat, and power. Montana law also provides a class of licensure designated as a residential electrician. An applicant for a residential electrician's license is required to furnish written evidence of at least two years of apprenticeship in the electrical trade or two years of legally obtained practical experience in the wiring for, installing, and repairing of electrical apparatus and equipment for light, heat, and power in residential construction consisting of less than five living units in a single structure. An applicant for a master electrician's license is required to provide written evidence of being a graduate electrical engineer of an accredited college or university and having one year of legally obtained practical electrical experience or of being a graduate of an electrical trade school and having at least four years of legally obtained practical experience in electrical work or at least five years of legally obtained practical experience in planning, laying out, or supervising the installation and repair of wiring, apparatus, or equipment for electrical light, heat, and power. An apprentice electrician may work only under the supervision of a licensed electrician.

The South Dakota State Electrical Commission has adopted rules establishing experience requirements for electricians. The rules provide that for advancement from an apprentice electrician to a journeyman electrician, an applicant must complete four years of electrical training under the employment and supervision of a licensed electrical contractor or Class B electrician. A journeyman electrician seeking to become a Class B electrician must complete two years of electrical training under the employment and supervision of a licensed electrical contractor or Class B electrician. The rules require that the training must include a minimum of one year in residential or farmstead wiring. To advance from a journeyman electrician to an electrical contractor, an individual must complete two years of electrical experience under the employment and supervision of an electrical contractor in commercial and residential or farmstead wiring and additional training, including the technical knowledge to plan, lay out, and supervise the installation of electrical light, heat, and power in accordance with the National Electrical Code. Under South Dakota law and rule, an apprentice electrician must be personally supervised by a licensed electrician.

Testimony and Committee Considerations

The committee received testimony from a representative of the State Electrical Board who stated that the training and licensing requirements are in place to ensure safety for electricians and consumers. Because of the demand for electricians in this state, the board has been working to encourage high school students to enter the electrical trade. In addition, to help address the workforce shortage, the board has been attempting to enter reciprocal licensing agreements with other states. However, the agreements generally require that a journeyman electrician have 8,000 hours of experience, which is a national standard. The representative of the board testified that about 95 percent of the individuals who went through apprenticeship passed the journeyman test. The committee also received information indicating that the pass rate on journeyman examinations in this state compared favorably with other states.

The committee received testimony from a representative of the State College of Science regarding the education and training of electricians at the college. The testimony indicated that the college graduates approximately 55 students to 70 students annually, and approximately 40 percent to 45 percent of the students stay in the state. Because of the growth in the energy industry in this state and neighboring states, the demand for electricians has increased and salaries have increased.

The committee also received comments from the North Dakota Electrical Contractors Association, which supported the 8,000-hour experience requirement.

Committee members generally agreed that the training and education requirements are necessary to

protect the public and for the entering of reciprocity agreements with other states.

Conclusion

The committee makes no recommendation with respect to its study of the licensure, training, and classroom education requirements for electricians in the state.

COMMERCE DEPARTMENT STUDY

Background

1999-2000 Interim Study

The Legislative Assembly established the Department of Commerce in 2001. The legislation creating the department was the result of an interim study conducted by the Commerce and Labor Committee. That committee was directed to study the economic development efforts in the state, including the provision of economic development services statewide and related effectiveness, the potential for privatization of the Department of Economic Development and Finance, and the appropriate location of the North Dakota Development Fund, Inc., including potential transfer of the fund to the Bank of North Dakota.

During the 1999-2000 interim, the Commerce and Labor Committee reviewed the functions of the Department of Economic Development and Finance, the Division of Community Services, other state departments and agencies engaged in economic development activities, local economic development entities, and other groups and entities engaged in economic development activities in the state. With respect to the Department of Economic Development and Finance, the testimony indicated the three goals of the department were to develop a shared vision for economic development efforts in the state, build the local capacity and ability of communities to secure successful investment outcomes, and promote the state to create awareness and to generate leads for successful investment outcomes. The roles of the department included business assistance, business recruitment, business finance, minority business development, opportunity fund, program support, and special industry assistance. The testimony indicated that areas in which the department did not provide services included community development assistance, entrepreneurial development, and international trade and investment. The study also found that economic development services were lacking in program support in policy and planning, special industry assistance and telecommunications, state development strategic planning, technology development and transfer, and workforce preparation and development. The testimony indicated that although the department was improving services provided, there was a need to address globalization and international growth.

The Commerce and Labor Committee reviewed information regarding the funding of the department and information comparing the department's funding to the funding of development agencies of other states. The committee also reviewed the National Association of State Development Agencies' biennial report comparing development agencies and services provided across the country.

With respect to the Division of Community Services, the Commerce and Labor Committee received testimony that the division's primary involvement in economic development was through community block grant funds. The testimony indicated the division worked closely with regional planning councils and the Department of Economic Development and Finance.

The Commerce and Labor Committee also received testimony with respect to privatization and consolidation privatization of state economic development services. Factors given to support privatizing economic development services included removing economic development from politicians, which results in continuity between administrations; providing greater expertise as economic development gets more complicated; dealing better with the private sector elements of economic development; allowing greater flexibility in responding to market changes; and getting the private sector to be involved and help fund economic development.

The executive director of the Department of Economic Development and Finance testified in opposition to complete privatization of the state's economic development efforts in part because of the need for public accountability if public funds are involved. However, the committee received testimony suggesting globalization might be a good example of an area that would benefit from private/public partnerships.

A representative of the Department of Economic Development and Finance testified that some potential benefits of private/public partnerships could include:

- Improved leadership roles in economic development;
- Improved vision and a strategic plan to guide the state's economic development;
- Reduced role of politics in economic development;
- Increased consistency in state development efforts;
- Leveraged public sector funds with private sector funds for economic development;
- Reduced state costs for economic development;
- Improved performance and accountability of economic development;
- Improved quality and professionalism of state development staff;
- Increased flexibility in how state economic development organizations manage resources;
- Reduced size of state government;
- Improved responsiveness of economic development in meeting the needs of business;
- Improved effectiveness of state, regional, and local economic development;
- Improved coordination of resources at all levels of economic development;
- Improved dialogue between private sector, executive, and legislative branches;
- Increased continuity in state development efforts when governors and legislators change;
- Increased use of private sector leaders as development ambassadors;

- Improved responsiveness by state development economic changes and business needs; and
- Improved information to better support state development.

The Commerce and Labor Committee received information from representatives of the National Association of State Development Agencies regarding privatization of state economic development services and associated trends. The committee was informed that the trend in privatization more frequently was implemented through a targeted approach, whereby privatization deals with one particular niche, versus a broad approach in which the privatization is general purpose. Typically, the targeted approach provided for a private, nonprofit board that oversees the activities of the public economic development agency. With a private advisory board, typically the Governor chooses the board members, and the Governor and the Legislative Assembly choose how to appropriate funds for economic development.

The Commerce and Labor Committee received testimony indicating that four of the primary objectives of states that privatize economic development services were:

1. Assisting in leveraging support of the private sector, primarily in the form of in-kind support versus financial support;
2. Creating a forum to get advice and counsel from the private sector;
3. Increasing the level of buyin from the private sector; and
4. Increasing the private sector's acceptance of state economic development programs.

A representative of the Bank of North Dakota testified that if economic development services were to be privatized, it would be necessary to reevaluate which organization should be in control of finances, and it is possible the Bank of North Dakota's role would be larger under those circumstances.

The Commerce and Labor Committee received testimony from a representative of the National Association of State Development Agencies which indicated that trends in economic development include the move toward centralization or creation of a mechanism to facilitate unification, such as creation of an economic development cabinet; unification through a single economic development budget; and proliferation of economic development at regional and local levels, whereby even if the state has some degree of control over centralization, it is difficult for a state to control or centralize at the local and regional levels.

The National Association of State Development Agencies surveyed state agencies regarding the provision of economic development services within the state and submitted the *NASDA Report to North Dakota on Potential Fine Tuning of State Economic Development Program*. The Department of Economic Development and Finance received high marks across the board in the survey, and negative observations indicated that perhaps there were too many economic development service providers within the state, and there did not appear to be a mechanism to coordinate the state economic development services. The report encouraged the state to:

- Establish a central cabinet-level department of commerce to create more synergy among the state's economic development programs;
- Set up a regional network to support local economic development activities;
- Create a commerce cabinet to maximize cooperation and collaboration among the various state-funded entities that retain some economic development responsibilities;
- Create a unified economic development budget that would include all agencies that expend state funds for economic development and which would be submitted through the department of commerce; and
- Establish a private, nonprofit foundation to serve as an advisory panel for the department of commerce, which would oversee strategic planning and goal setting to guide the state's efforts to strengthen its economy, and which would set benchmarks with which to assess the effectiveness of the state's programs.

The Commerce and Labor Committee received testimony suggesting that if the committee considered consolidation of economic development services, existing state agencies could be consolidated into a larger agency, an entirely new agency could be created, or a combination of these two approaches could be used.

The director of the Department of Economic Development and Finance testified that creation of a department of commerce could increase efficiency, improve customer service, and provide coordination of economic development services and planning. A representative of the Bank of North Dakota testified that it was not realistic to have "one-stop" shopping for all economic development services.

The Commerce and Labor Committee received a recommendation from the Economic Development Association of North Dakota which proposed the creation of a North Dakota Department of Commerce, including the North Dakota Department of Economic Development and Finance, Tourism Department, Division of Community Services, Labor Department, and the North Dakota Workforce Development Council.

Senate Bill No. 2032 (2001)

As a result of its deliberations, the Commerce and Labor Committee recommended Senate Bill No. 2032 (2001). The bill provided for the creation of a department of commerce by consolidating the Division of Community Services, Department of Economic Development and Finance, and Tourism Department. The bill proposed that the new department would be administered by a commissioner of commerce. The bill provided for the creation of five specific divisions within the department--a division of community services, a division of economic development and finance, a division of tourism, a division of international trade, and a division of workforce development. The bill provided for the establishment of a North Dakota commerce cabinet and

allowed for the creation of a privately funded North Dakota development foundation.

During the standing committee hearing for Senate Bill No. 2032, there was additional testimony regarding the purposes of the proposed creation of the Department of Commerce. The chairman of the Commerce and Labor Committee testified that in light of a stagnant economy, it is necessary to provide an increased state commitment to economic development which focuses resources and establishes structure, assurances, and programs that provide confidence to investors and legislators. The chairman testified that there was support for additional resources for economic development but some concern with centralization. In addition, he stated there was substantial agreement on having a central cabinet and an economic development foundation, but skepticism regarding a unified economic development budget. The standing committee and conference committee testimony indicates that one of the greatest concerns with the bill was the inclusion of the Tourism Department within the Department of Commerce.

Standing committee testimony with respect to the creation of an economic development foundation indicated the main purposes of the foundation would be to develop a strategic economic development plan and to provide accountability with respect to economic development.

Senate Bill No. 2032, as enacted, consolidated the Division of Community Services, Department of Economic Development and Finance, and Tourism Department in the newly created Department of Commerce. The bill required the Governor, with the advice and counsel of the North Dakota Economic Development Foundation, to appoint the Commissioner of Commerce to administer the department. The bill provided that the department must consist of a Division of Community Services, a Division of Economic Development and Finance, a Division of Tourism, a Division of Workforce Development, and any other division determined to be necessary by the commissioner. Under the bill, after delayed implementation dates, the commissioner was required to appoint the division directors.

Senate Bill No. 2032 also created a North Dakota commerce cabinet composed of the directors of each of the department's divisions and of the executive heads or other authorized representatives of the State Board for Vocational and Technical Education (now named the State Board for Career and Technical Education), the State Board of Higher Education, the Bank of North Dakota, the Department of Agriculture, the Workers Compensation Bureau (now named Workforce Safety and Insurance), the Department of Transportation, Job Service North Dakota, the Game and Fish Department, and of any other state agency appointed by the commissioner. Under the bill, the cabinet was required to coordinate and communicate economic development and tourism efforts of the agencies represented and develop and make available before each regular session the Legislative Assembly a list that identifies economic development money included in the budget requests of the cabinet agencies.

Senate Bill No. 2032 also created the North Dakota Economic Development Foundation composed of at least 15 members, but not more than 30 members, appointed by the Governor. The bill provided that the purpose of the foundation would be to serve in an advisory role to the commissioner; develop a strategic plan for the development of value-added agriculture; develop a strategic plan for economic development in the state; and set accountability standards, measurements, and benchmarks to evaluate the effectiveness of the department in implementing the economic development strategic plan.

The duties of the Commissioner of Commerce, codified as NDCC Section 54-60-03, include:

1. Serving as chairman of the commerce cabinet.
2. Preparing the cabinet's list identifying economic development money included in budget requests of cabinet agencies.
3. Managing the operations of the department.
4. Assuming central responsibilities to develop, implement, and coordinate a working network of commerce service providers.
5. Advising and cooperating with departments and agencies of the federal government and of other states; private businesses, agricultural organizations, and associations; research institutions; and with any individual or other private or public entity.
6. Reporting to the Legislative Assembly on the department's goals and objectives, activities and measurable results, and benchmarks.

Department of Commerce Divisions

Although Senate Bill No. 2032 consolidated the Division of Community Services, the Department of Economic Development and Finance, and the Tourism Department into the new Department of Commerce, the duties of those divisions and the officials supervising those divisions did not change.

The mission and duties of the Division of Economic Development and Finance and the duties of the director of the division are set forth in NDCC Chapter 54-34.3. Under Section 54-34.3-01, the mission of the division is to develop strategies and programs to:

1. Facilitate the growth, diversification, and expansion of existing enterprises and the attraction and creation of new wealth-generating enterprises in the state;
2. Promote economic diversification and innovation within the basic industries and economic sectors of this state, including strategies and programs designed to specialize and focus the state's economy on advanced agriculture and food processing, energy byproduct development, export services and tourism, and advanced manufacturing;
3. Promote increased productivity and value-added products, processes, and services in the state, and the export of those goods and services by North Dakota enterprises to the nation and to the world;

4. Maintain and revitalize economically depressed rural areas by working in close collaboration with local communities and by encouraging communities to enter into cooperative relationships for more efficient and effective education, health care, government service, and infrastructure maintenance;
5. Forge a supportive partnership with the Bank of North Dakota, the State Board of Higher Education and the state's institutions of higher education, regional planning councils, local development organizations and authorities, the Myron G. Nelson Fund, Inc., the state's nonprofit development corporations, and other appropriate private and public sector organizations in achieving the economic goals of the state; and
6. Identify those statutes, administrative rules, and policies that impede the attraction, creation, and expansion of businesses and job creation in this state.

Other statutory duties of the director of the Division of Economic Development and Finance include administering the finance office and implementing a certification program through which the division may provide training to assist local economic developers in meeting the needs of businesses.

The duties of the director of the Division of Economic Development and Finance are set forth in NDCC Section 54-34.3-04. Those responsibilities include:

1. Assuming central responsibility to develop, implement, and coordinate within state government a comprehensive program of economic development consistent with the mission of the division.
2. Coordinating the program of economic development with all other appropriate state and local government departments, agencies, institutions, and organizations that perform research, develop and administer programs, gather statistics, or perform other functions relating to economic development.
3. Advising, and cooperating with, departments and agencies of the federal government and of other states, private business and agricultural organizations and associations, research institutions, and any individual or other private or public entity, and calling upon those entities or individuals for consultation and assistance in their respective fields of endeavor or interest in order that the division and the state may benefit from up-to-date technical advice, information, and assistance.
4. Cooperating with individuals and both public and private entities, including the state's congressional delegation, in identifying and pursuing potential sources of funding.

North Dakota Century Code Section 54-34.3-13 requires the Department of Commerce to manage and administer the rural growth incentive program.

The duties of the director of the Division of Tourism are set forth in NDCC Section 54-34.4-02. Under that section, the director is required to:

1. Implement the state's tourism policy.
2. Prepare and update annually a tourism master plan for the development of tourism in the state which identifies the state's tourism resources, estimates the impact of tourism on the state's economy, and proposes a five-year plan for activities of the division.
3. Measure and forecast visitor volume, receipts, and related social and economic impacts.
4. Work with the private sector and local, state, and federal agencies to develop the state's tourism-related infrastructure, facilities, services, and attractions, including the state's highways and parks.
5. Organize and coordinate programs designed to promote tourism to, and within, the state through various means.
6. Participate in travel shows.
7. Supervise and administer visitor information centers that receive funding from the state.
8. Develop opportunities for professional and technical education and training in the visitor industry.
9. Foster an understanding among the state's residents of the economic importance to the state of hospitality and tourism.
10. Cooperate with local, state, and federal agencies and organizations and the private sector for the promotion and development of tourism to, and within, the state.
11. Provide advice and technical assistance to local, public, and private tourism organizations in promoting and developing tourism.
12. Monitor the policies and programs of state agencies that significantly affect the visitor industry, notify those agencies of the effects of their actions on travel to, and within, the state, and, if necessary, recommend programs or policy changes to those agencies.

The responsibilities of the Division of Community Services are set forth in NDCC Chapter 54-44.5. Section 54-44.5-04 requires the division to:

1. Provide relevant information on pertinent topics and issues which relate to public policy development, interpretation, modification, and implementation.
2. Research, analyze, and recommend public policy for the Office of Management and Budget and the executive office.
3. Coordinate public policy implementation within the state.
4. Develop state energy conservation policy and manage federal energy conservation program activities between all levels of the public and private sectors regarding the prudent and efficient use of energy resources.
5. Develop, implement, and administer federal categorical and block grant programs assigned to the division.
6. Advise, coordinate, and assist cities, political subdivisions, and the state in all phases of state

and local planning for the physical development of the state.
7. Render financial assistance to any government planning agency within federal law or regulation.
8. Advise, consult, coordinate, assist, and contract with or on behalf of the various planning agencies in developing and harmonizing planning activities of the state.
9. Implement a state facility energy improvement program.

2003 Legislation

In 2003 the Legislative Assembly made one significant change that affected the structure adopted in Senate Bill No. 2032. Senate Bill No. 2393 (2003) added to the responsibilities of the North Dakota Economic Development Foundation by requiring the foundation to recommend state and federal legislation relating to strengthening the state's economy and increasing the state's population, monitor state and federal legislation and initiatives that may impact the state's economy and population, and serve as a source of expertise for developing public and private initiatives to strengthen the state's economy and increase the state's population. The bill also required the Division of Workforce Development to monitor local, regional, and national public and private workforce development initiatives.

2005 Legislation

In 2005 the Legislative Assembly adopted legislation addressing economic development accountability, the structure of the Division of Economic Development and Finance and the Division of Community Services, and additional duties of the commissioner and the department.

House Bill No. 1203 (2005) defined a business incentive and required recipients of business incentives to enter a business incentive agreement with each grantor of the incentive. The bill required the business incentive agreement to include a description of the incentive, a statement of the public purpose of the incentive, goals for the incentive, a description of the financial obligation of the recipient if the goals are not met, a commitment by the recipient to continue operations in the jurisdiction in which the incentive is used for five years or more after the benefit date, the name and address of the parent company of the recipient, a list of all financial assistance by all grantors for the project, and the recipient's obligation if the recipient does not fulfill the business incentive agreement. The bill required the Department of Commerce to create state grantor recipient report forms and provided that before April 1, 2007, and each April 1 thereafter, each state agency that has granted a business incentive within the last five calendar years must file an annual state grantor report with the department. The bill required the department to publish a compilation and summary of the results of the state grantor reports for each calendar year beginning in 2007. The bill also required political subdivisions to maintain records of business incentives provided to recipients and to prepare an annual political subdivision grantor report.

Senate Bill No. 2018 (2005) required the director of the Division of Economic Development and Finance to administer the International Business and Trade Office and permitted the director to contract with a third party for the provision of services for the International Business and Trade Office. The bill authorized the director to establish an International Business and Trade Office Advisory Board. The bill required the director to implement a certification program through which the division would provide training to assist local economic developers in meeting the needs of businesses. The bill established an Office of Renewable Energy and Energy Efficiency within the Division of Community Services. The bill also required the commissioner of the Department of Commerce to identify target industries to focus economic development efforts and designate one target industry as a special focus target industry. The bill required the commissioner to implement a program for use by state agencies to assist the agencies to present to the public a positive image of the state and required the commissioner to create and implement a business hotline program.

2007 Legislation

In 2007 the Legislative Assembly also made structural changes to the Department of Commerce.

House Bill No. 1018 (2007) required the Division of Workforce Development to develop and implement the state's talent strategy and a statewide intelligence coordination strategy and to administer a program to increase the use of higher education internships and work experience opportunities for higher education students. The bill required the division, in developing and implementing the state's talent strategy, to develop a comprehensive, consolidated biennial statewide strategic plan for the state's system for workforce development, workforce training, and talent attraction. The bill also required the division to continuously review, identify how to improve, and implement improvements to the state's system of workforce development, workforce training, and talent attraction. In addition, the division is required to develop and implement a system of performance and accountability measures for the state's system for workforce development, workforce training, and talent attraction.

House Bill No. 1018 required the Division of Workforce Development, in consultation with the Department of Career and Technical Education, Job Service North Dakota, and the Superintendent of Public Instruction, to develop and implement a program to assist public schools in promoting North Dakota career opportunities to students in grades 9 through 12. The bill also required the Department of Commerce to implement and administer a Beginning Again North Dakota pilot program to develop a database of skills and other assets of communities and residents to be used to advance the internal and external attitude and image of the state.

House Bill No. 1137 (2007) repealed provisions in NDCC Chapter 54-34.3 which related to the

establishment of an international business and trade office, a North Dakota American Indian Business Development Office, and a North Dakota women's business development office and reenacted similar provisions in Chapter 54-60. The bill changed the membership of the Value-Added Agriculture Promotion Board to provide that the board consist of a minimum of 9 members and a maximum of 11 members and added a representative of the Agricultural Products Utilization Commission as a member of the board. The bill required that the North Dakota Economic Development Foundation Executive Committee include up to three members at large and a treasurer in addition to the chairman, vice chairman, and secretary.

House Bill No. 1019 (2007) provided that the Workforce Enhancement Council consist of the private sector members of the Workforce Development Council, the director of the Department of Career and Technical Education, and the director of the Division of Workforce Development. The bill required the Workforce Enhancement Council to recommend to the Commissioner of Commerce the approval of grants to institutions of higher education assigned primary responsibility for workforce training to be used to create or enhance training programs that address workforce needs of primary sector companies. The bill also established a workforce enhancement fund.

House Bill No. 1027 (2007), which was introduced as a result of a study during the 2005-06 interim by the Economic Development Committee, included a proposal to require the Department of Commerce to have a division of innovation and technology. Although the bill failed to pass, many of the provisions of the bill were included within House Bill No. 1018. However, the proposal to create another division within the department was not included in House Bill No. 1018, nor in other bills containing provisions from House Bill No. 1027.

Testimony and Committee Considerations

The committee received testimony from representatives of the Department of Commerce regarding the organizational structure of the department. The Commissioner of Commerce testified that the number of programs implemented under the department has doubled to about 50 since the creation of the department. The commissioner indicated that the department appears to be organized in an efficient and effective manner with a structure that is conducive to teamwork among four divisions that share a common purpose in coordinating economic and community development activities. Because of the colocation of the various divisions into the department, administrative efficiencies have been achieved as well as providing uniformity in marketing.

An Office of Innovation and Strategic Initiatives was created within the department in May 2007. That office administers the centers of excellence and the InnovateND program. The commissioner testified that it does not appear necessary to provide for a statutorily required division of science and technology.

The committee received an update regarding the North Dakota Economic Development Foundation strategic plan benchmarks. The plan included six goals:

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

Within each goal, the plan includes specific benchmarks upon which to measure the effectiveness of the department. Data provided to the committee indicated the department has experienced success in working toward the goals since 2000. Among the successes cited by the department are:

- The state was ranked fourth in the *2007 State Competitiveness Report*.
- The state was ranked ninth by *Forbes* on the list of "Best States for Business."
- The state had the second highest percentage growth from 2000 to 2006 in academic research and development expenditures according to the National Science Foundation.
- Since 2000, 30,000 new jobs have been created in the state, 5,000 of which were created in 2007.
- Average annual wages have increased by over $8,400 per person.
- Positive business stories in national media provided an advertising equivalency of more than $2.4 million in 2007, and the number of media inquiries regarding North Dakota business topics doubled in a recent 12-month period.
- The state experienced net job growth in all industries targeted in the plan--advanced manufacturing, energy, tourism, value-added agriculture, and technology-based business.
- The state is one of three states to increase the number of manufacturing jobs between 2000 and 2006.
- The state's gross domestic product grew to over $26 billion in 2006.
- The state led the nation in the growth of exports in 2007 and global sales expanded to over $2 billion.
- The state's manufactured exports exceeded $2 billion in 2007, which was an increase of over $500 million since 2006.

Representatives of the department presented information regarding the department's efforts to set performance goals and tie employee salary increases to those goals. During the last year, 63 employees set

424 goals. Of those goals, 108 were exceeded, 291 were met, and 25 were not met.

Committee members generally agreed that the department and the North Dakota Economic Development Foundation were making progress in meeting the expectations and that the performance measurements of the department were indicating success in achieving the goals of the strategic plan. Members of the committee expressed some concerns regarding economic development funding at the local level and the dedication of state resources to assist local economic develop entities.

Conclusion

The committee makes no recommendation with respect to its study of the Department of Commerce.

RENAISSANCE ZONE CONFERENCE

The committee participated in the Renaissance Zone Conference held on February 6, 2007. The conference was attended by more than 60 individuals, and 42 communities were represented at the conference. Approximately 700 renaissance zone projects have been approved and 500 projects completed in the 42 cities that have created renaissance zones. The report of the Renaissance Zone Conference, which was also required to be submitted to the Workforce Committee, indicated that no significant issues were identified which required attention. However, the report included four recommendations for enhancements to the renaissance zone program:

1. Extend the 15-year period for a renaissance zone.
2. Include the cost of demolition if demolition is necessary for a project.
3. Eliminate the one-half mile requirement for the allowed three-block island.
4. Allow the historical tax credits to be transferred to new owners.

The Workforce Committee reviewed and considered those recommendations.

INSURANCE COMMISSIONER REPORT

The committee received a report from a representative of the Insurance Commissioner on findings regarding insurers' use of modified community rating for health insurance or health benefits coverage policies pursuant to NDCC Section 26.1-36.4-06. That section, which was adopted by the Legislative Assembly in 1995, provides that premiums charged for individual health insurance policies during a rating period could not vary from lowest to highest rate by a ratio greater than 6 to 1 after August 1, 1995, and by a ratio of greater than 5 to 1 after August 1, 1996. The legislation also provided that gender and duration of coverage may not be used as a rating factor for policies issued after January 1, 1997.

The report of the Insurance Commissioner indicated that a survey was developed using 1994 data to evaluate the impact of the 1995 legislation on companies that were selling individual policies. The initial survey indicated that 10 of 13 companies that responded were using gender rating; 4 companies were using durational rating; 1 company had a ratio exceeding 6 to 1; 3 other companies had a ratio exceeding 5 to 1; and 12 of the companies intended to continue selling policies in the state. An annual report from 1994 indicated 26 companies were issuing policies in the state with a total premium amount of $76 million. The total number of policies was 33,322, and the total number of lives covered by the policies was 64,458.

In 2007, 13 companies were issuing policies with a total premium amount of $101 million. The total number of policies was 23,729, and the total number of lives covered by the policies was 43,738. The report suggested that the decrease in companies issuing policies and the number of policies issued may have been impacted by the modified community rating law but also likely was impacted by other factors.

WORKFORCE SAFETY AND INSURANCE REPORT

Pursuant to NDCC Section 65-06.2-09, the committee received a report from WSI regarding the status of the modified workers' compensation program performance audit and the Roughrider Industries safety audit. 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 report indicated Roughrider Industries was found to be in compliance with all components of the WSI risk management program. The audit of the modified workers' compensation coverage program indicated that the program is effective.

COMMISSIONER OF FINANCIAL INSTITUTIONS REPORT

The committee received a report from the Commissioner of Financial Institutions on the outcome of the commissioner's study of how the state's building and loan association and mutual savings bank laws relate to conversions of state credit unions to building and loan associations or mutual savings banks. The commissioner reported that there has not been any state-chartered building and loan association in this state since the 1970s. The commissioner testified that Senate Bill No. 2295 (2007) included a repeal of NDCC Title 7 which becomes effective August 1, 2009. The commissioner indicated that one credit union is seeking to convert to a state-chartered building and loan association. The report also indicated that there is a significant advantage to being a federally chartered savings and loan as opposed to holding a state charter. The commissioner testified that he would draft proposed legislation to replace Title 7 if requested to do so, but likely will not support the legislation. The commissioner also testified that replacement of Title 7 will also require significant administrative rule changes.

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. Review macro-level issues relating to information technology.
5. Review the activities of the Information Technology Department.
6. Review statewide information technology standards.
7. Review the statewide information technology plan.
8. Review information technology efficiency and security.
9. Review established or proposed information technology programs and information technology acquisitions by the executive and judicial branches.
10. Receive and review information, including a project startup report summarizing the project description, project objectives, business need or problem, cost-benefit analysis, and project risks and a project closeout report summarizing the project objectives achieved, project budget and schedule variances, and lessons learned, from the Information Technology Department and the affected agency regarding any major information technology project of an executive branch agency. A major project is a project with a total cost of $250,000 or more.
11. Receive and review information, including a project startup report summarizing the project description, project objectives, business need or problem, cost-benefit analysis, and project risks and a project closeout report summarizing the project objectives achieved, project budget and schedule variances, and lessons learned, from the Information Technology Department and the affected institution regarding any major project of the State Board of Higher Education or any institution under the control of the State Board of Higher Education. A major project is a project that significantly impacts the statewide wide area network, impacts the statewide library system, or is an administrative project and is a project with a cost of $250,000 or more in one biennium or a total cost of $500,000 or more.
12. Receive and review information from the Information Technology Department and the affected agency regarding any information technology project of an executive branch agency with a total cost of between $100,000 and $250,000 as determined necessary by the Information Technology Department.
13. Receive a report from the Chief Information Officer regarding the recommendations of the State Information Technology Advisory Committee relating to the prioritization of proposed major information technology projects and other information technology issues.
14. Receive and review information, including a project startup report summarizing the project description, project objectives, business need or problem, cost-benefit analysis, and project risks and a project closeout report summarizing the project objectives achieved, project budget and schedule variances, and lessons learned, from the affected legislative or judicial branch agency regarding any information technology project of the legislative or judicial branch with a total cost of $250,000 or more.
15. Receive information from the State Board of Higher Education regarding higher education information technology planning, services, and major projects.

North Dakota Century Code Section 54-35-15.3 authorizes the Information Technology Committee to review any information technology project or information technology plan. The section provides that 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 or 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 provides that the Information Technology Committee may 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 also assigned the responsibility for receiving:

- A report from the State Board of Higher Education regarding higher education information technology planning, services, and major projects pursuant to NDCC Sections 15-10-44 and 54-35-15.2.
- A report from the Statewide Longitudinal Data System Committee before the 61st Legislative Assembly on the status of the plan for a longitudinal data system pursuant to NDCC Section 15.1-02-18.

- A report from the Chief Information Officer regarding the recommendations of the State Information Technology Advisory Committee relating to the prioritization of proposed major information technology projects and other information technology issues pursuant to NDCC Section 54-35-15.2.
- 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.
- The annual report from the Information Technology Department pursuant to NDCC Section 54-59-19.
- Reports from the Department of Corrections and Rehabilitation during the planning phase of the department's development of an inmate medical system and a project startup report before the inmate medical system is implemented pursuant to Section 12 of House Bill No. 1015 (2007).

Committee members were Senators Larry J. Robinson (Chairman), Randel Christmann, Richard Marcellais, Tom Seymour, and Rich Wardner; Representatives Craig Headland, Keith Kempenich, David Monson, Kenton Onstad, Mark S. Owens, and Robin Weisz; and Chief Information Officer Lisa Feldner.

The committee submitted this report to the Legislative Council at the biennial meeting of the Council in November 2008. The Council accepted the report for submission to the 61st Legislative Assembly.

PRIORITIZATION OF PROPOSED MAJOR COMPUTER SOFTWARE PROJECTS

North Dakota Century Code Section 54-59-02.1 requires the State Information Technology Advisory Committee to prioritize major computer software projects. The Chief Information Officer is to submit recommendations of the committee regarding major computer software projects to the Information Technology Committee, Office of Management and Budget, and Appropriations Committees of the Legislative Assembly.

The committee received information from the Information Technology Department regarding the prioritization of proposed major computer software projects for the 2009-11 biennium and learned executive branch agencies developed and internally prioritized information technology projects, submitted their information technology budgets into the budget analysis and reporting system, and identified projects required to be prioritized by the State Information Technology Advisory Committee. The Information Technology Department compiled the information technology projects over $250,000 by funding source. State agencies self-scored the projects based on return on investment, customer service benefits, internal efficiency benefits, operational necessity, and project risk. The Information Technology Department presented the self-scoring of these projects to the State Information Technology Advisory Committee for the committee's prioritization.

The State Information Technology Advisory Committee met on August 24-25, 2008, and prioritized major executive branch computer software projects for the 2009-11 biennium as follows:

General Fund Projects

	Project	Agency	Preliminary Project Budget	
			General Fund	Total Funds
1	Statewide seamless base map	Adjutant General	$2,100,000	$2,100,000
2	Computer-aided dispatch - Phase 2	Adjutant General	2,000,000	2,000,000
3	Additional State Radio towers	Adjutant General	7,200,000	7,200,000
4	Longitudinal data system	Information Technology Department	6,085,270	6,085,270
5	Eligibility determination system replacement	Department of Human Services	9,250,000	18,500,000
6	North Dakota business development engine	Secretary of State	3,400,698	3,400,698
6	Elementary and secondary education PowerSchool hosting	Information Technology Department	3,180,000	3,180,000
8	Taxpayer access program/financial institution tax	Tax Department	1,250,000	1,250,000
9	Criminal Justice Information Sharing (CJIS) Initiative project pool	Information Technology Department	1,027,535	1,327,535
10	Oil and gas taxes - GenTax integration	Tax Department	1,500,000	1,500,000
11	Business intelligence and data warehouse	Office of Management and Budget	500,000	500,000
12	Data center remodel	Information Technology Department	1,635,000	1,635,000
13	Integrate offender management systems	Department of Corrections and Rehabilitation	3,000,000	3,000,000
	Total		$42,128,503	$51,678,503

Special Funds Projects

	Project	Agency	Preliminary Project Budget
1	Student loan lender system	Bank of North Dakota	$3,500,000
2	Lab information management system replacement	Attorney General's office	700,000
3	Driver's license system replacement	Department of Transportation	15,000,000
4	System web portal	Workforce Safety and Insurance	1,500,000
5	Enterprise e-mail retention	Information Technology Department	1,065,000
6	FileNet - Phase 2	Workforce Safety and Insurance	950,000
7	Claims scanning	Workforce Safety and Insurance	350,000
	Total		$23,065,000

Federal Funds Projects			
	Project	Agency	Preliminary Project Budget
1	Offender checking	Attorney General's office	$731,328
2	Longitudinal data system	Department of Public Instruction	5,000,000
3	Asset management analysis	Department of Transportation	503,000
	Total		$6,234,328

The Information Technology Department will revise the prioritizations to reflect those projects that are included in the Governor's 2009-11 biennium budget and will present the prioritizations to the Appropriations Committees of the 2009 Legislative Assembly.

INFORMATION TECHNOLOGY DEPARTMENT STRATEGIC 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 2009-11 biennium. The plan includes 23 objectives relating to the department's mission to provide leadership and knowledge to assist customers in achieving information technology. The following is a summary of the objectives included in the plan:

Perspectives	Objectives
Customer	Meet customer service delivery expectations Provide an "easy to do business with" environment Provide a positive customer experience Build and maintain strong relationships Provide information technology services as needed Provide technology direction
Financial	Make cost-effective investments Manage revenue Align rates with customer business needs Manage statewide technology spending
Internal processes	Standardize processes and approaches Deliver reliable and available services Deliver solutions on schedule Deliver projects on time and within budget Capture and followup on customer feedback Continuous sharing and understanding of business needs Plan for technology change Provide guidance on information technology best practices Deploy enterprise solutions
Learning and growth	Attract and hire quality people Maintain high employee satisfaction Support employee growth and development Retain talented 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 includes an executive summary, rate comparisons, and information on the department's performance.

The committee learned the department tracks and monitors the cost and revenue for each service to ensure that one service is not subsidizing another service. The federal government does not allow the department to charge rates that generate revenues in excess of costs; therefore, the department monitors its cash balances and adjusts rates accordingly. The department also monitors other entities' rates 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:

Service	North Dakota Information Technology Department Rates	South Dakota Bureau of Information and Telecommunications Rates	Montana Information Technology Services Division Rates	Wisconsin Division of Enterprise Technology Rates
Central computer central processing unit (CPU rates)	**Batch CPU** - $.93 per second **CICS CPU** - $.93 per second **ADABAS CPU** - $.98 per second	**Batch CPU** - $1.36 per second **CICS CPU** - $1.36 per second **ADABAS CPU** - $1.36 per second	**Batch CPU** - $2.36 per second **CICS CPU** - $.69 per second **ADABAS CPU** - $1.34 per second	**Batch CPU** - $.51 per second **CICS CPU** - $.67 per second **ADABAS CPU** - $.67 per second

Service	North Dakota Information Technology Department Rates	South Dakota Bureau of Information and Telecommunications Rates	Montana Information Technology Services Division Rates	Wisconsin Division of Enterprise Technology Rates
Network fees	**TSO CPU** - $.93 per second **Device fee** - $30.75 per device per month **DSL service** - Actual cost (ranges from $40 to $120) **ATM T-1 service** - $890 per month	**TSO CPU** - $1.36 per second **Device fee** - $40 per device per month **DSL service** - N/A **ATM T-1 service** - N/A **Access fee** - $65 per device per month	**TSO CPU** - $2.88 per second **Device fee** - $85.75 per device per month **DSL service** - $250 per month **ATM T-1 service** - $650 per month	**TSO CPU** - $.67 per second **Device fee** - $55 per device per month **DSL service** - $665 per month **ATM T-1 service** - $1,067 per month

Telephone Fees	
North Dakota Information Technology Department rates	Telephone line - $24 per device per month Speaker function - $3 per month Display function - $2 per month Voice mail (unlimited) - $5 per month
South Dakota Bureau of Information and Telecommunications rates	Telephone line - $13 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 - $14 per device per month Speaker function - $7 to $11 per month Display function - $3 to $7 per month Voice mail (three-minute limit) - $5 per month Voice mail (six-minute limit) - $8 per month Voice mail (eight-minute limit) - $10 per month
Wisconsin Division of Enterprise Technology rates	Telephone line - Per mile/drop Speaker function - Actual cost Display function - Actual cost Voice mail (unlimited) - $5.50 per month

Long Distance	
North Dakota Information Technology Department rates	In state - $.075 per minute Out of state - $.075 per minute 800 service - $.07 per minute
South Dakota Bureau of Information and Telecommunications rates	In state - $.08 per minute Out of state - $.09 per minute 800 service - $.09 per minute
Montana Information Technology Services Division rates	In state - $.105 per minute Out of state - $.105 per minute 800 service - $.10 per minute
Wisconsin Division of Enterprise Technology rates	In state - $.031 per minute Out of state - $.031 per minute 800 service - $.044 per minute
Minnesota Department of Administration rates	In state - $.07 per minute Out of state - $.20 per minute 800 service - $.049 per minute
Nebraska Division of Communications rates	In state - $.07 per minute Out of state - $.07 per minute 800 service - $.08 per minute

Software Development		
	Location	**Billing Rate Per Hour of Service**
Information Technology Department	Bismarck, North Dakota	$58 to $63
Applied Engineering, Inc.	Bismarck, North Dakota	$75 to $125
Eide Bailly LLP	Bismarck, North Dakota	$95 to $155
Enterprise Solutions, Inc.	Bismarck, North Dakota	$75 to $120
Nexus Innovations	Bismarck, North Dakota	$95 to $125
Vision Technology, Inc.	Bismarck, North Dakota	$70 to $75
Everest Consultants, Inc.	Beaverton, Oregon	$63 to $95
CIBER, Inc.	Vancouver, Washington	$65 to $100
Compuware	Plymouth, Minnesota	$80 to $120
Maximus	Rancho Cordova, California	$145 to $185

The report included information on the department's performance measures. The following is an update on the department's performance measures:

Performance Measures	Baseline (Previous Years)	Current Status (June 2008)	Target
Acceptable level of total net assets	2005 - 2.0 2006 - 1.4 2007 - 1.7	1.4	< or = to 2.0
Percentage of Information Technology Department rates reported in the annual report that are competitive	2006 - 100% 2007 - 100%	100%	100%
Total number of customer projects and service requests completed:	2007		
• Service requests	28,564	32,105	Monitor
• Incidents	48,792	53,738	Monitor
Customer satisfaction indexes (percentages satisfied or very satisfied) related to:	2006 - 2007		
• Value	91.7% - 87.3%	86.9%	92%
• Timeliness	92.5% - 87.4%	86.9%	97%
• Quality	93.7% - 95.5%	93.0%	97%
• Knowledge	93.1% - 94.8%	97.0%	98%
• Professionalism and courtesy	96.5% - 97.1%	99.0%	100%
Employee satisfaction index	2006 - 2.13 2007 - 2.13	2.13	2.0
Controllable employee turnover	2006 - 7.0% 2007 - 4.6%	6.8%	Below 6.0%
Percentage of service levels met	100%	100%	100%
Percentage of strategic business plan objectives completed or on schedule	2006 - 85% 2007 - 46%	43%	75%

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 institutions under the control of the State Board of Higher Education, each executive branch 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 committee learned 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. The policies, standards, and guidelines are categorized as follows:

Category	Number of Policies, Standards, and Guidelines
Information Technology Department	5
Application software	3
Communications	2
Data and information	4
Desktop	5
Document management	6
E-government	9
Network	7
Security	10
Servers and storage	1
Total	52

INFORMATION TECHNOLOGY PLANS

North Dakota Century Code Section 54-59-11 requires every executive branch agency, except institutions under the control of the State Board of Higher Education, to prepare an information technology plan subject to acceptance 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 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 Information Technology Department regarding information technology plans and learned 46 of the 53 state agencies submitted their information technology plans on or before July 15. Four additional state agencies submitted their information technology plans by October 1. Two of the remaining three state agencies plan to submit their information technology plans by the end of October 2008. The remaining state agency--State Fair Association--does not intend to file a plan. The department will present to the 2009 Legislative Assembly a statewide information technology plan that will communicate a shared vision between state government, higher education, and elementary and secondary education; 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 a project startup and project closeout report for any major information technology project, which is defined in statute to be an executive, judicial, or legislative branch project with a cost of $250,000 or more or a higher education project that impacts the statewide wide area network, impacts the statewide library system, or is an administrative project.

Project Management Life Cycle Processes

The committee learned the project management life cycle for major information technology projects consists of five processes--project origination, project initiation, project planning, project execution and control, and project closeout. The following is a summary of the project management life cycle processes and activities relating to planning and executing major information technology projects:

Project Management Life Cycle Processes	Activities
Project origination - Evaluate projects proposed for the next planning cycle and reach a consensus on the projects to be selected	1. Agencies identify projects to create a product or develop a service that can solve a problem or address a need within the agency. 2. Agencies develop a project proposal, including a business case and proposed solution, for each proposed project. The business case should include information on project description, project objectives, business need or problem, proposed solution, consistency and fit with the organization's mission, cost-benefit analysis, and project risks. 3. Agencies prioritize information technology projects and submit their information technology budgets into the budget analysis and reporting system. In most cases, the budget for a project is the initial cost estimate. The most accurate project budget is not available until the completion of the project planning process. 4. The State Information Technology Advisory Committee, a committee created by NDCC Section 54-59-07, reviews information regarding proposed major information technology projects for executive branch state agencies, excluding institutions under the control of the State Board of Higher Education and the judicial and legislative branches, and ranks those projects that receive the committee's affirmative recommendation. The following is a summary of the steps involved in the prioritization: a. The Information Technology Department sorts proposed information technology projects over $250,000 into the following three categories: (1) Projects requesting funds from the **general fund**. (2) Projects requesting funds from **special funds** sources. (3) Projects requesting funds from **federal funds**. b. State agencies **self-score projects** based on return on investment, customer service benefits, internal efficiency benefits, operational necessity, and project risk. c. The Information Technology Department presents a preliminary report, including information regarding agencies' self-scoring, on the projects to the State Information Technology Advisory Committee. d. The State Information Technology Advisory Committee prioritizes the projects by funding source category. e. The Information Technology Department forwards the prioritizations to the Information Technology Committee and the Office of Management and Budget for consideration in the development of the Governor's budget recommendation. 5. The Governor selects projects to be funded in the executive budget recommendation. 6. The Information Technology Department revises the prioritizations to reflect those projects that are funded in the Governor's budget recommendation and presents the prioritizations to the Appropriations Committees of the Legislative Assembly. 7. The Legislative Assembly selects projects to be funded in the legislatively approved budget. 8. Agencies refine the business cases as appropriate for those projects funded in the legislatively approved budget. 9. Agencies submit a copy of the final business case for a project to the Information Technology Department.
Project initiation - Define the overall parameters of a project and establish the appropriate project management and quality environment required to complete the project	10. Agencies initiate the project by identifying the project sponsor, project manager, and project team; developing a project charter; and conducting a project kickoff meeting. A project charter is developed and executed to initiate a project and to secure commitment for the resources, including human, financial, and equipment, necessary for the project. A project charter should include information on project background, project scope, measurable project objectives, required resources, constraints, assumptions, and project authority. 11. Agencies submit a copy of the project charter to the Information Technology Department prior to any project expenditures or signing of vendor contracts.
Project planning - Define the exact parameters of a project and ensure that all the	12. Agencies complete planning for a project by completing and approving a project plan. A project plan should identify specific milestones throughout the project and their associated cost, schedule, and deliverables. At this time, agencies complete the budget for the project. This project budget is considered to be the baseline budget for all cost comparisons.

Project Management Life Cycle Processes	Activities
prerequisites for the project execution and control are in place	13. Agencies submit a copy of the project plan to the Information Technology Department after the plan has been approved by the project sponsor. 14. Agencies present a project startup report to the Information Technology Committee. A project startup report summarizes information from the business case, project charter, and project plan, including project description, project objectives, business need or problem, cost-benefit analysis, and project risks.
Project execution and control - Develop the project or service that the project was commissioned to deliver	15. Agencies launch the project. The assigned project manager is to manage every aspect of the project to ensure that all the work is being performed correctly and on time. 16. Agencies submit a project status report to the Information Technology Department on a quarterly basis or when a project milestone exceeds 20 percent of planned cost or schedule. The status report includes an executive summary and information on budget, schedule, issues, risks, project accomplishments, and upcoming activities. 17. Each calendar quarter, the Information Technology Department prepares a large project summary report that summarizes the performance of large information technology projects and submits the report to the Information Technology Committee. 18. Agencies formally acknowledge that all deliverables produced during project execution and control have been completed, tested, accepted, and approved by the project sponsor.
Project closeout - Assess the project and derive any lessons learned and best practices to be applied to future projects	19. Agencies complete a postimplementation review for the project in order to assess the success of the project and to capture historical information. The postimplementation review should include information on the measurement and attainment of project objectives, project budget and schedule variances, and lessons learned. 20. Agencies notify the State Information Technology Advisory Committee if the actual cost for the project exceeded the original budget by 20 percent or more or if the final project completion date extended beyond the original project scheduled completion date by 20 percent or more. 21. Agencies submit a copy of the postimplementation review to the Information Technology Department. 22. Agencies present a project closeout report to the Information Technology Committee. A project closeout report summarizes information from the postimplementation review, including the project objectives achieved, project budget and schedule variances, and lessons learned.

Review of Major Information Technology Projects

The committee received and reviewed quarterly reports of major information technology projects compiled by the Information Technology Department, project startup and project closeout reports relating to major information technology projects, and other information regarding specific information technology projects. The following is a summary of the project startup and project closeout reports received by the committee:

Project Startup Reports				
Agency	**Project Name**	**Project Description**	**Estimated Cost**	**Estimated Completion Date**
Department of Human Services	Children with disabilities project	Senate Bill No. 2326 (2007) provides optional medical assistance for families of children with disabilities whose net income does not exceed 200 percent of the federal poverty level. The project consists of the information technology changes necessary to implement the new program.	$306,826	February 2008
Department of Human Services	Medicaid enterprise management and administrative reporting system	Implementation of an enterprise management and administrative reporting system to provide Medicaid utilization and budget forecasting reports	$337,114	February 2008
Department of Transportation	Time and labor project	Automate the manual-based paper timesheet process with electronic authorization and workflow	$318,118	January 2008
Department of Transportation	Geographic information system (GIS) image log project	Create a web-enabled, geographically driven image log application that will utilize current payment management images as well as the state's current GIS infrastructure	$229,200	May 2007
Attorney General's office	Automated fingerprint identification system upgrade	Upgrade of the automated fingerprint identification system equipment and software used in partnership by the North Dakota Bureau of Criminal Investigation, Minnesota Bureau of Criminal Apprehension, and South Dakota Division of Criminal Investigation	$385,025	December 2007
Information Technology Department	STAGEnet video transition project	Transition of the service and operation of the videoconferencing network for kindergarten through grade 12, state agencies, and political subdivisions from the North Dakota University System Interactive Video Network to the Information Technology Department	$385,882	September 2007

Project Startup Reports				
Agency	**Project Name**	**Project Description**	**Estimated Cost**	**Estimated Completion Date**
Legislative Assembly	Legislative applications replacement system project - Phase 2	Replacement of legislative applications	$3,910,825	November 2008
Information Technology Department	Project management information system	Acquisition, implementation, configuration, support, and end-user training of an enterprise management information system to be used by state agencies to support the application of project management principles and methodologies	$283,030	March 2008
Workforce Safety and Insurance	Information technology transformation program system replacement project - Phase 2	Replacement of existing core business applications with a commercial, off-the-shelf integrated software solution. Phase 2 of the project is the implementation phase of the selected solution--Valley Oak Systems' iVOS product.	$12,813,171 with $1,186,829 in reserve	December 2009
Public Employees Retirement System	PERSLink	Implementation of a new integrated benefits administration system that will include web-enabled, self-service functionality	$10,502,214	September 2010
Judicial branch	Unified court information system	Implementation of a commercial, off-the-shelf case management system to replace the current unified court information system	$5,375,000 to $7,375,000	July 2011
State Treasurer's office	Tax distribution rewrite	Rewrite of the existing outstanding checks and tax distribution applications to a new language for a more user-friendly and easy to maintain environment	$664,942	May 2009
Job Service North Dakota	Unemployment insurance modernization program	Conversion of the agency's unemployment insurance system functionality to a modern integrated system that is more capable of quickly adapting to the changing needs of internal and external stakeholders	$15,000,000	Seven- to nine-year program
Department of Corrections and Rehabilitation	Inmate medical system	Obtain and implement an electronic medical record system that allows the agency to administer, manage, and record all aspects of medical care provided to both adult and juvenile offenders	$1,000,000	May 2009
Department of Public Instruction	Foundation aid system rewrite project	Establish an educational portal to be accessed by department staff, school administrators, and special education administrators to aid in reducing duplicate data collection and collaborating on information dissemination	$350,000	June 2009
Department of Public Instruction	Special education individualized education program project	Implementation of a statewide web-based special education case management system	$1,000,000	December 2008
Department of Public Instruction	Teacher licensure application rewrite project	Rewrite of the department and the Education Standards and Practices Board systems from the mainframe to a modern architecture capable of meeting the data reporting demands that are required by federal and state laws	$665,400	June 2009
Department of Human Services	Master client index project	Provide the base architecture needed to create a single client view across the department's services and programs	$686,603	October 2009
Department of Human Services	Children and family services front-end project	Implementation of a single case management system for the department's child abuse and neglect, in-home treatment and wraparound, and foster care programs	$1,027,257	August 2009
Department of Human Services	Continuous Medicaid eligibility project	Modification of the department's eligibility system--Vision--to accommodate continuous Medicaid eligibility for children under 19 years of age who are either categorically needy or optionally categorically needy	$366,502	October 2008
Department of Human Services	Electronic benefits transfer reprocurement project	Reprocurement of a vendor to provide electronic benefits transfer of food stamps benefits	$320,000	September 2009
Information Technology Department	Criminal Justice Information Sharing (CJIS) Initiative portal 2.0 project	Modification of the CJIS portal so the addition of new record types is completed by configuration rather than by development	$280,000	January 2009

Project Startup Reports				
Agency	**Project Name**	**Project Description**	**Estimated Cost**	**Estimated Completion Date**
Office of Management and Budget	Absence management	Implementation of an online, self-service absence request and management application	$551,000	November 2008
State Department of Health	Disease surveillance and management system	Implementation of a flexible and configurable, commercial, off-the-shelf electronic disease surveillance and outbreak management system	$550,000	March 2009

Project Closeout Reports				
Agency	**Project Name**	**Project Description**	**Actual Cost**	**Actual Completion Date**
Department of Human Services	Temporary assistance for needy families diversion project	Integrate the diversion assistance program into the existing temporary assistance for needy families program in the Vision system	Actual expenditures of $146,701, compared to the budget of $244,972	Completed within the scheduled completion date of August 2006
Department of Transportation	Priority systems rewrite	Integration of the planning improvement program and the statewide transportation program processes into one system	Actual expenditures of $270,607, compared to the budget of $290,525	Completed in May 2007, approximately one month earlier than the scheduled completion date of June 2007
Department of Transportation	Geographic information system image log project	Create a web-enabled, geographically driven image log application that will utilize current payment management images as well as the state's current GIS infrastructure	Actual expenditures of $212,300, compared to the budget of $229,200	Completed in June 2007, approximately one month later than the scheduled completion date of May 2007
Tax Department	Integrated tax system	Implementation of the commercial, off-the-shelf integrated tax system named GenTax developed by FAST Enterprises	Actual expenditures of $11,650,704, compared to the budget of $13,791,044	Completed within the scheduled completion date of June 2007
Public Employees Retirement System	Legacy application system replacement - Phase 3	Develop and execute a request for proposal and select a vendor to replace the agency's multiple legacy applications with a single integrated modern application	Actual expenditures of $480,421, compared to the budget of $590,326	Completed in July 2007, approximately one month later than the scheduled completion date of June 2007
Legislative Assembly	Legislative applications replacement system project - Phase 1	Planning for the replacement of legislative applications, including a cost-benefit analysis and design requirements documentation	Completed on budget with actual expenditures of $737,367	Completed in May 2007, approximately one month earlier than the scheduled completion date of June 2007
Information Technology Department	STAGEnet video transition project	Transition of the service and operation of the videoconferencing network for kindergarten through grade 12, state agencies, and political subdivisions from the North Dakota University System Interactive Video Network to the Information Technology Department	Actual expenditures of $338,813, compared to the budget of $385,882	Completed within the scheduled completion date of September 2007
Department of Human Services	National provider index	Update of the legacy Medicaid management information system and other applications used to process claims to accept the new national provider identifier	Actual expenditures of $384,317, compared to the budget of $476,576	Completed within the scheduled completion date of December 2006
Department of Public Instruction	Online reporting system upgrade (STARS)	Replacement of the agency's online reporting system with a new upgraded system	Actual expenditures of $278,306, compared to the budget of $340,247	Completed within the scheduled completion date of October 2007
Department of Transportation	Time and labor project	Automate the manual-based paper timesheet process with electronic authorization and workflow	Completed on budget with actual expenditures of $321,312	Completed within the scheduled completion date of December 2007
Secretary of State	Knowledge base/central indexing system	Acquire and implement a new software application to replace existing technology systems for central indexing system functions	Actual expenditures of $770,105	The project was terminated.

Project Closeout Reports				
Agency	**Project Name**	**Project Description**	**Actual Cost**	**Actual Completion Date**
Information Technology Department	Project management information system	Acquisition, implementation, configuration, support, and end-user training of an enterprise management information system to be used by state agencies to support the application of project management principles and methodologies	Actual expenditures of $296,892, compared to the budget of $310,603	Completed in February 2008, approximately one month earlier than the scheduled completion date of March 2008
Department of Human Services	Children with disabilities project	Implementation of the necessary information technology changes to implement the optional medical assistance for families of children with disabilities whose net income does not exceed 200 percent of the federal poverty level	Actual expenditures of $170,213, compared to the budget of $284,406	Completed within scheduled completion date of February 2008
Department of Human Services	Medicaid enterprise management and administrative reporting system	Implementation of an enterprise management and administrative reporting system to provide Medicaid utilization and budget forecasting reports	Actual expenditures of $374,642, compared to the budget of $337,114	Completed in April 2008, approximately two months later than the scheduled completion date of February 2008
Secretary of State	Central voter file project (election administration system)	Completion of the agency's election improvement program by tying together the uniform election system and the election management system under the umbrella of the PowerProfile EE	Actual expenditures of $1,255,692, compared to the budget of $1,523,574	Completed in May 2008, approximately nine months later than the scheduled completion date of August 2007
Attorney General's office	Automated fingerprint identification system upgrade	Upgrade of the automated fingerprint identification system equipment and software used in partnership by the North Dakota Bureau of Criminal Investigation, Minnesota Bureau of Criminal Apprehension, and South Dakota Division of Criminal Investigation	Actual expenditures of $394,825, compared to the budget of $385,882	Completed in June 2008 approximately six months later than the scheduled completion date of December 2007
Department of Emergency Services	Public safety mobile communications project	Implementation of a new radio system with the capability of operating in either an analog or digital mode	Completed on budget with actual expenditures of $8,101,386	Completed in August 2008, approximately 22 months later than the scheduled completion date of October 2006
Job Service North Dakota	Case management system	Replacement of the agency's existing customized case management system with a commercial, off-the-shelf application	Actual expenditures of $820,731, compared to the budget of $854,919	Completed in September 2008 approximately 16 months later than the scheduled completion date of May 2007

Legislative Assembly - Legislative Applications Replacement System Computer Project

The 2007 Legislative Assembly provided a $3,910,827 general fund appropriation for Phase 2 of the legislative applications replacement system computer project. An executive steering group consisting of representatives of the Legislative Assembly, the Legislative Council staff, and the Information Technology Department was established to coordinate the project. The Legislative Council entered contracts with Enterprise Solutions, Inc., Bismarck, for project management services and PTC Global Services for software development.

The committee learned PTC Global Services completed Phase 1 of the project, which included a cost-benefit analysis, design requirements documentation, and proof of concept in May 2007 for a cost of $737,367. PTC Global Services completed Phase 2, stage 0, the catalyst, conference committee, and business process validation in May 2007 at a cost of $531,209. Phase 2 of the project consisted of 46 milestones organized into 10 application bundles. In July 2008 PTC Global Services reported the new system would not be complete for the 2009 Legislative Assembly due to delivery failures in late May 2008 requiring PTC's development of a new system architecture. In August 2008 representatives of the Legislative Council staff, PTC Global Services, and the Information Technology Department met to review the proposed new architecture for the project. The Information Technology Department had additional questions and concerns with the proposed architecture. On September 24, 2008, PTC Global Services sent a notice of intent to cancel the Statement of Work for the project. The Legislative Council staff is working to close out the project, including reviewing work accomplished, capturing reusable items,

transferring all data and documentation, and working on knowledge transfer for moving forward with the legislative applications replacement system.

Information Technology Department - Mainframe Migration Project

The committee learned the Information Technology Department is in the process of completing a mainframe migration project. The department's objectives for the project were revised in November 2007. The following is a summary of the original and revised objectives and the current status of the objectives:

Original Objectives (December 2005)	Revised Objectives (November 2007)	Current Status
Remove the need for the mainframe skill-set	Remove the need for the mainframe skill-set	This objective will be met when the mainframe is removed. The department has hired consultants to supplement the existing staff which has been reduced because of retirements.
Save $1.9 million per year beginning in July 2009	Save $2.4 million per year beginning in July 2011	The department estimates these savings will begin in July 2013.
Realize financial break-even point in 2012	Realize financial break-even point in 2016	If the existing applications are rewritten by July 2013, the break-even date will be 2017.
Position the department for the future	Position the department for the future	The project has succeeded in migrating 46 applications off the mainframe.

The committee learned the department had originally planned to migrate 84 applications from the mainframe to other information technology platforms. Due to project difficulties and delays, the department migrated only 46 applications from the mainframe with the final application being migrated on August 9, 2008. Several applications at the Department of Human Services, Bank of North Dakota, Department of Transportation, and Legislative Assembly will remain on the mainframe. The department anticipates finalizing system documentation relating to the mainframe migration project by November 28, 2008.

Department of Human Services - Medicaid Management Information System Rewrite Project

The committee learned the 2005 Legislative Assembly appropriated $29,188,859, of which $3,667,820 was state matching funds from the permanent oil tax trust fund, to the Department of Human Services to rewrite the Medicaid management information system. The 2007 Legislative Assembly provided additional funding of $31,072,641, of which $3,643,133 is state matching funds from the general fund, for the project. The department did not spend all of the state matching funds during the 2005-07 biennium and was authorized to continue the unspent funds into the 2007-09 biennium for the project. As a result, the department used these funds to obtain additional federal matching funds of $2,267,871 for the project. Total funding available for the project is:

	State Match	Federal Funds	Total
2005-07 appropriation	$3,667,820	$25,521,039	$29,188,859
2007-09 appropriation	3,643,133	27,429,508	31,072,641
Additional federal matching funds		2,267,871	2,267,871
Total	$7,310,953	$55,218,418	$62,529,371

The committee learned ACS State Healthcare, LLC (ACS), the project vendor, is also deploying a similar Medicaid management information system in New Hampshire and Alaska. ACS may be behind schedule in its development of the Medicaid management information system. The department is negotiating with ACS regarding revisions to the project schedule. The negotiations are focused on the postdesign phases of the project, including the estimation of the implementation work effort to finalize system configuration, data conversion, training, and system and user acceptance testing. All of these functions are dependent on the timely delivery of the ACS product with North Dakota requirements. A delay in the project schedule is not anticipated to have an impact on the project's budget.

The committee learned the department is continuing to prepare system design specifications. The department anticipates completing system design in January 2009 and will begin the implementation phase of the project after the system design is complete. The following is a summary of project expenditures through August 2008:

	Project Budget	Expenditures	Budget Remaining
General fund	$3,643,133	$1,055,855	$2,587,278
Federal funds	55,218,418	15,897,673	39,320,745
Other funds	3,667,820	1,007,597	2,660,223
Total	$62,529,371	$17,961,125	$44,568,246

Department of Corrections and Rehabilitation - Inmate Medical System

Section 12 of House Bill No. 1016 (2007) provides that the Department of Corrections and Rehabilitation provide an update on the inmate medical system to the Information Technology Committee and the Budget Section at the completion of the project planning phase and prior to the project implementation phase. The section also provides that Budget Section approval is required before the department proceeds with project implementation.

The committee learned the purpose of the Department of Corrections and Rehabilitation's inmate medical system project is to obtain an electronic medical

record system that allows the department to administer, manage, and record all aspects of medical care provided to both adults and juvenile offenders. The system will also provide an integrated pharmacy system, including automated drug inventory ordering, dosage tracking, and drug cost-analysis reporting. The department selected a vendor to supply a commercial, off-the-shelf inmate medical system and received Budget Section approval to proceed with the project implementation on June 18, 2008. The project is estimated to cost $1 million and be completed in May 2009.

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. In addition, Sections 15-10-44 and 54-35-15.2 provide that the Information Technology Committee is to receive information from the State Board of Higher Education regarding higher education information technology planning, services, and major projects. Pursuant to these directives, the committee received information from representatives of higher education, elementary and secondary education, and political subdivisions regarding information technology activities.

Higher Education

Planning, Services, and Major Projects

The committee learned House Bill No. 1461 (2007) provides that the State Board of Higher Education is to manage and regulate information technology planning and services for institutions under its control. Pursuant to House Bill No. 1461, the North Dakota University System chief information officer has drafted policies, standards, guidelines, and procedures to be followed for project management, oversight, and reporting of information technology projects.

The committee received and reviewed quarterly reports of major information technology projects compiled by the North Dakota University System and project startup and project closeout reports relating to major information technology projects. The following is a summary of the project startup and project closeout reports received by the committee:

Project Startup Reports

Project Name	Project Description	Estimated Cost	Estimated Completion Date
ConnectND student administration system infrastructure upgrade	Installation of new storage and servers for the ConnectND student administration system production environment	$1,700,000	August 2007
TouchNet project	Implementation of software modules that will allow all campuses to accept online credit card payments with payments processed through a payment card industry-compliant vendor	$329,481	February 2008
Campus solutions upgrade	Upgrade of the ConnectND student administration system from Version 8.0 to the new PeopleSoft campus solutions Version 9.0, change of the database from Microsoft SQL to Oracle, and implementation of the user productivity kit	$1,350,000	August 2008
Northern Tier Network	Implementation of a multiple 10 gigabit optical network to reach east and west from Seattle to Chicago and north and south from Winnipeg to Omaha. North Dakota's segments will border Montana to the west, Minneapolis to the east, the Canadian border to the north, and a location yet to be determined in South Dakota to the south	$6,000,000	Ongoing

Project Closeout Reports

Project Name	Project Description	Actual Cost	Actual Completion Date
ConnectND student administration system infrastructure upgrade	Installation of new storage and servers for the ConnectND student administration system production environment	Actual expenditures of $1,356,875, compared to the budget of $1,700,000	Completed in July 2007 approximately one month earlier than the scheduled completion date of August 2007
Campus solutions upgrade	Upgrade of the ConnectND student administration system from Version 8.0 to the new PeopleSoft campus solutions Version 9.0, change of the database from Microsoft SQL to Oracle, and implementation of the user productivity kit	Actual expenditures of $1,136,226, compared to the budget of $1,350,000	Completed in June 2008 approximately two months earlier than the scheduled completion date of August 2008

ConnectND System

The committee learned the North Dakota University System's 2007-09 appropriation for a common information services (CIS) pool of $31,477,093, includes an increase of $6 million from the general fund for support of the ConnectND system, of which $2.3 million is one-time funding and $3.7 million is base funding. During the 2007 Legislative Assembly, the University System developed 10 recommendations for stabilizing the ConnectND system. The University System has begun implementing all of the recommendations with the funding provided by the 2007 Legislative Assembly. The following is a summary of the current status of the recommendations:

Recommendation	Current Status
Increase investment in human resources by 11.5 new full-time equivalent (FTE) positions	The system has filled 8.5 of the 11.5 FTE positions. The system is experiencing difficulties in filling and retaining staff in the remaining 3 FTE positions.
Upgrade the finance system and improve the grants and contracts module	The upgrade was completed in conjunction with the Office of Management and Budget and the Information Technology Department in May 2008.
Upgrade the hardware, software, electrical, and backup generator systems at the University of North Dakota data center	The upgrade was completed prior to the start of the fall 2007 semester.
Upgrade the student administration software from Version 8.0 to Version 9.0	The upgrade was completed in June 2008.
Perform a student administration system security risk assessment	The initial activity of identifying the general composition of the assessment was completed during the summer of 2007. The system is in the process of planning for the full assessment.
Develop a comprehensive student administration data center disaster recovery plan	The University System is in the process of developing the plan. The plan is anticipated to be complete in November 2008.
Implement a consistent toolset for manageability	Staff has decided to use Microsoft's Windows software for an operating system and has acquired Oracle's database software for database use. The transition was completed in June 2008.
Implement a data warehouse solution	Planning is in progress. The University System is working with the Statewide Longitudinal Data System Committee to ensure a smooth flow of data between the University System data warehouse and the statewide longitudinal data system.
Implement a student administration admissions customer relationship management solution	Customer relationship management software was selected and purchased. The University System is in the early stages of implementation.
Implement Oracle's user productivity kit solution to support the development of documentation during upgrades	The software has been installed and is available in conjunction with the implementation of the upgrades to the finance and student administration systems.

Northern Tier Network

The committee learned the Northern Tier Network Consortium, which was founded in 2003, seeks to develop and sustain advanced networking capabilities in order to support the education, research, and economic vitality of the Northern Tier region. The Northern Tier Network is an ultra high-speed regional network with multiple optical waves capable of transferring about 10 gigabytes of information per second per wave. Each Northern Tier Network state is responsible for the development and ongoing support of its segment of the network. North Dakota's east and west segment of the network will be utilizing donated fiber from AT&T, and the University System is planning for the north and south segment of the network.

The committee learned the 2007 Legislative Assembly provided one-time funding of $2,773,800 from the permanent oil tax trust fund for the Northern Tier Network infrastructure. The University System also received a federal grant for costs associated with implementing the network. The estimated cost for implementing the network is $6 million and the estimated annual recurring costs for maintenance for the network is $1 million. The University System anticipates approximately $1 million of the funding from the permanent oil tax trust fund will be carried forward to fiscal year 2010 and will be used to pay for annual maintenance costs.

The committee learned NDCC Section 15-10-45 provides that the University System may use the Northern Tier Network infrastructure only for the purpose of supporting the research and education missions of the University System. The University System may not use the Northern Tier Network infrastructure for traditional Internet, voice, video, or other telecommunications services beyond those required for research networks. The provisions of Section 15-10-45 also prohibit the University System from utilizing commercial peering services offered through Internet2. The University System plans to ask the 2009 Legislative Assembly to clarify and reduce the legislative restrictions in Section 15-10-45.

The committee received information from Qwest Communications and the North Dakota Association of Telecommunications Cooperatives and learned that these organizations oppose the reduction of the legislative restrictions placed upon the North Dakota University System and the Northern Tier Network.

Internet2

The committee learned Internet2 is a research and development consortium led by higher education institutions in partnership with private industry and other government agencies to develop and deploy advanced network applications and technologies. North Dakota State University and the University of North Dakota are members of Internet2 and the other North Dakota University System higher education institutions, kindergarten through grade 12, and the Flatlands Disability Network are sponsored education group participants. Internet2 facilitates high-performance applications not possible on the Internet, supports development of revolutionary applications, allows the transfer of large data sets quickly, and allows testing of new technologies.

2009-11 Budget Request

The committee learned the University System's budget request for the 2009-11 biennium includes information technology-related items totaling $14,275,320, of which $2,525,320 is for base funding

and $11,750,000 is for one-time funding. The following is a summary of specific information technology-related budget request items for the 2009-11 biennium beyond regular parity or cost-to-continue funding requests:

Base funding	
Current bandwidth services - For the 2007-09 biennium, $420,000 of system information technology services parity cost was funded as one-time funding instead of base funding. The one-time funding was used to cover the costs of current bandwidth during the 2007-09 biennium. Bandwidth demands are not anticipated to decrease in the 2009-11 biennium; therefore, base funding is needed to sustain current bandwidth services.	$420,000
Future bandwidth services - Funding for increased bandwidth needs based on projected traffic growth of 50 percent.	800,000
On-line Dakota Information Network web developer - A new position to enhance and ease the use of the library system.	150,000
Northern Tier Network maintenance - Funding for annual maintenance costs for the Northern Tier Network for the second year of the 2009-11 biennium. Maintenance costs for the first year of the biennium will be paid for with carryover funding from the 2007-09 biennium.	1,000,000
Followup information on North Dakota education and training (FINDET) system - Staff and related costs to continue support of the two FTE positions that provide information on graduates and student performance. This level of funding will also provide 100 percent of the support for this activity in the University System office budget.	155,320
Subtotal - Base funding	$2,525,320
One-time funding	
Interactive Video Network (IVN) CODEC replacement - The videoconference technology in IVN classrooms needs to be upgraded to allow for high-definition videoconferencing.	$350,000
CIS collaboration and emergency pool - Funding to be allocated by the University System chief information officer in support of technology and tools that foster more effective and efficient delivery of central information technology services and to address unforeseen needs not anticipated in the budget process.	200,000
Joint North Dakota University System and University of North Dakota information technology facility - Funding for a facility to jointly house University System information technology service operations and University of North Dakota information technology systems and services.	11,200,000
Subtotal - One-time funding	$11,750,000
Total	$14,275,320

Elementary and Secondary Education

The committee learned the Educational Technology Council is created by NDCC Section 54-59-17 for coordinating education technology initiatives for elementary and secondary education. The council provides governance for EduTech and the Center for Distance Education. The council's initiatives include:

- Qwest technology grants - The council administered a teacher technology grant program with funding from the Qwest Foundation. The council awarded 10 grants on a competitive basis in December 2007.
- Classroom transformation grants - The council awarded 22 classroom transformation grants to schools in February 2008. The grants require a 50 percent local school match.
- Video classroom grants - The council awarded four video classroom grants to kindergarten through grade 12 video network consortiums for new or upgraded video classrooms and one video grant award for statewide IP videorecording capability. The grants require a 60 percent local match.

The committee learned the Educational Technology Council will submit a 100 percent budget request for the 2009-11 biennium with no optional requests.

EduTech offers a variety of services to North Dakota schools and educators for improving student achievement. EduTech's initiatives include:

- Core information technology services - EduTech provides core information technology services to schools, including e-mail, web hosting, desktop protection, and Internet filtering.
- Professional development services - EduTech provides professional development services to schools to assist educators with enhancing learning in the classroom.
- PowerSchool application - EduTech provides support to schools for the PowerSchool application, a student information system.

The committee learned EduTech will submit a 100 percent budget request for the 2009-11 biennium with one optional request relating to expansion of the PowerSchool application to all elementary and secondary schools.

The committee learned the Center for Distance Education, formerly known as the Division of Independent Study, was established in 1935 by the Legislative Assembly to provide distance education courses for students in kindergarten through grade 12 and adults. The center has developed and published North Dakota studies fourth grade workbooks and eighth grade textbooks. The center and the State Historical Society have collaborated to develop and publish a high school textbook entitled *North Dakota History*. The center has also developed a North Dakota studies website.

The committee learned the Center for Distance Education will submit a 100 percent budget request for the 2009-11 biennium with four optional requests relating to employee compensation, additional online course enhancement and development, North Dakota studies, and civics education.

Political Subdivisions

The committee learned the coordination of information technology services between the Information Technology Department, counties, and cities is essential to the efficient delivery of services. The Information Technology Department through the statewide information technology network provides the network connectivity, Internet access, firewall security, videoconferencing, and secure wireless access that supports the delivery of services. Information Technology Department personnel meet regularly with the North Dakota Association of Counties to discuss

issues and strategize about future improvements and enhancements. The Information Technology Department and the North Dakota League of Cities have developed records retention schedules for all departments of city government.

OTHER INFORMATION

Information Technology Department 2009-11 Budget Request

The committee received information from representatives of the Information Technology Department regarding the department's budget request for the 2009-11 biennum. The committee learned the department's budget request for the 2009-11 biennium includes several optional package adjustments, including adjustments relating to additional bandwidth for elementary and secondary schools, statewide deployment of the PowerSchool application for elementary and secondary schools, deployment of a statewide longitudinal data system, Criminal Justice Information Sharing Initiative projects, and ongoing costs relating to the statewide automated victim information and notification system.

The committee learned Section 6 of House Bill No. 1021 (2007) provides legislative intent that 28 new FTE positions for the Information Technology Department for the 2007-09 biennium are identified as project-specific and may be filled while the projects are being developed and funding is available. The department anticipates requesting authority to continue many of these positions for the 2009-11 biennium.

Information Technology Vendor Pool

The committee received information from representatives of the Information Technology Department regarding the department's information technology vendor pool. The committee learned due to an ongoing need for information technology contract professionals in a variety of skill-set categories, the department established an information technology vendor pool in July 2005. The department's contracts for the vendor pool expired on June 30, 2008; therefore, the department issued a request for proposal for a rebid of the vendor pool. The vendor pool includes vendors for the following information technology service categories:

Information Technology Service	Number of Categories
Software development	10
Web design and e-government	2
Project management and business analyst	2
Geographic information systems	3
Database administration	3
System and server administration	3
Business intelligence	2
Network and telecommunications	3
Quality assurance	2
Information systems security	1
PC support	1
Total	32

The committee learned the Information Technology Department accepted 38 of the 46 proposals received for the vendor pool. The new contract term is from July 1, 2008, through September 30, 2010, and the department has the option to expand the contract to September 30, 2011. The following is a summary of vendor pool contract awards:

Vendor	City	Number of Categories
22nd Century Technologies	Olympia, Washington	8
Agency MABU	Bismarck, North Dakota	1
Applied Data Consultants, Inc.	Eau Claire, Wisconsin	4
Applied Engineering, Inc.	Bismarck, North Dakota	3
Bahwan CyberTek, Inc.	Natick, Massachusetts	8
Bartlett and West, Inc.	Bismarck, North Dakota	2
BITS Corporation	Bismarck, North Dakota	1
Boden, Inc.	Somerset, New Jersey	18
CedarCrestone	Alpharetta, Georgia	2
CIBER, Inc.	Sacramento, California	4
Compuware Corporation	Eden Prairie, Minnesota	13
Data Transfer Solutions	Denver, Colorado	4
Eide Bailly LLP	Fargo, North Dakota	9
Enterprise Solutions, Inc.	Bismarck, North Dakota	4
Everest Consultants, Inc.	Beaverton, Oregon	2
Federal Engineering, Inc.	Fairfax, Virginia	4
GeoComm, Inc.	St. Cloud, Minnesota	2
GeoDecisions	Camp Hill, Pennsylvania	5
GeoNorth, LLC	Portland, Oregon	4
HCL America, Inc.	Vienna, Virginia	26
Houston Engineering, Inc.	Maple Grove, Minnesota	2
IMC	Reston, Virginia	1
iNet Technologies	Bismarck, North Dakota	1
Infotech Enterprises	Pittsburgh, Pennsylvania	3
Knowledge-IT, Inc.	South St. Paul, Minnesota	3
ManTech International Corporation	Falls Church, Virginia	1
MAXIMUS, Inc.	Rancho Cordova, California	2
McCain and Associates, Inc.	Bismarck, North Dakota	1
NDACo Resources Group	Bismarck, North Dakota	1
Nexus Innovations	Bismarck, North Dakota	6

Vendor	City	Number of Categories
Programming Solutions, Inc.	Brooklyn Park, Minnesota	1
Pro-West & Associates, Inc.	Walker, Minnesota	3
QA Technologies, Inc.	Omaha, Nebraska	3
Quintegra Solutions Company	San Jose, California	12
Softech & Associates, Inc.	Costa Mesa, California	1
SysTest Labs	Denver, Colorado	2
Vision Technology, Inc.	Bismarck, North Dakota	4

The committee learned a state agency using the vendor pool will issue a work order to the applicable vendors, including a description of work, skill-sets required, and project schedule and deliverables. The vendors in the contract pool will respond with a project offer. Agencies are responsible for selecting a vendor and reviewing and accepting the vendor's deliverables.

Information Technology Department Vulnerability Assessment and Penetration Testing

The committee learned the State Auditor's office conducts a Statement on Auditing Standards (SAS) No. 70 audit of the Information Technology Department each biennium. As part of the most recent audit, ManTech Security and Mission Assurance performed a vulnerability assessment and penetration test consisting of the following four phases:

Phase	Description
Phase 1 - External vulnerability assessment	An external vulnerability assessment is intended to provide an organization a snapshot of the overall security and risk picture of the network from an external point of view. External assessment procedures focus on performing Internet research, discovering systems connected to the Internet, and probing the system to discover misconfigurations and vulnerabilities.
Phase 2 - Internal vulnerability assessment	An internal vulnerability assessment is intended to provide an organization with a snapshot of the overall security and risk picture of the systems and network from an internal point of view. Internal assessment procedures focus on examining systems for vulnerabilities, misconfigurations, and implementation flaws that may expose the system to additional risk.
Phase 3 - Penetration testing	A penetration test is intended to provide an organization a snapshot of the overall security and risk picture of its network from an external point of view. Penetration testing focuses on gaining access to systems under an organization's control.
Phase 4 - Application security assessment	The test team performed an application security assessment of the ConnectND financial system.

The committee learned vulnerabilities discovered were assigned a risk identifier that was relative to the network or system under test. The three risk levels used are defined as follows:

- High risk - A high likelihood of compromise of system-level access exists. If exploited, this vulnerability may allow total control of the system.
- Medium risk - A vulnerability exists that may provide access to critical data or user-level access to a system. This vulnerability may lead to further exploitation.
- Low risk - A vulnerability exists that may disclose information but does not directly lead to the exploitation of a system.

The following is a summary of the findings, recommendations, and the current status of the recommendations:

Phase	Findings	Recommendations	Current Status
Phase 1 - External vulnerability assessment	Overall, 313 systems at state agencies or organizations were found to have at least one vulnerability that would provide an external attacker with a possible attack vector that could lead to the compromise of the state's network from the Internet. Numerous other vulnerable systems were also found on kindergarten through grade 12 and other education networks; however, a detailed analysis of these vulnerabilities was outside the scope of the assessment. For systems found on the state-controlled networks, there were 10 unique high-risk vulnerabilities found on multiple systems, 2 unique medium-risk vulnerabilities found on multiple systems, and 4 unique low-risk vulnerabilities found on multiple systems.	Review content available on publicly accessible servers	The department reviews server content on a regular basis and is comfortable with the information that is currently published.
		Filter inbound access to all state systems	The department only allows external access to servers where there is a business need. This recommendation is primarily an issue for higher education and kindergarten through grade 12.
		Ensure segregation between kindergarten through grade 12 and other education networks and the state network	The department has separated access between the state, higher education, and kindergarten through grade 12 networks.

Phase	Findings	Recommendations	Current Status
Phase 2 - Internal vulnerability assessment	Overall, 427 systems were found to have at least one vulnerability that would provide an attacker with a possible attack vector that could lead to the compromise of the state's network and sensitive information. There were 29 unique high-risk vulnerabilities found on multiple systems, 8 unique medium-risk vulnerabilities found on multiple systems, and 4 unique low-risk vulnerabilities found on multiple systems.	Segregate public servers from internal network	To the extent possible, the department architects its servers and the network according to this recommendation.
		Internal segregation of critical servers and development systems	The department maintains current patch levels and security configurations on all servers in the data center.
		Include applications in formal patch management program	To the extent possible, the department applies current patches for operating systems and application software on a regular basis. The department's monthly server scan assists in identifying high-risk security vulnerabilities if patches are not applied.
		Implement outbound access control	The department does not intend to implement the recommendation beyond the passive monitoring currently in place. The department does restrict certain outbound traffic in response to identified security risks.
		Require the use of encrypted protocols for remote management	The department is using encrypted protocols for remote management of most systems. The department is evaluating solutions for the remaining systems that will address the recommendation without causing significant business impact to users.
Phase 3 - Penetration testing	The test team targeted a total of nine systems for exploitation and successfully exploited one system. Although the test team could not fully access the system, given time the issues could have corrected and the system fully exploited. In addition, using social engineering techniques, the test team was successful in its attempts to gain account credential and showed the susceptibility of users to access malicious content on the Internet.	Educate users on social engineering techniques	The department and the State Auditor's office coordinated information technology coordinator briefings to raise awareness levels. The department provides online security awareness training on its website.
		Ensure servers and desktops are kept current on all operating system and application patches	The one system successfully compromised has been patched.
Phase 4 - Application security assessment	Overall there were two vulnerability findings with the application and its associated components, including one high-risk vulnerability relating to the operating system installed on the application host and one low-risk vulnerability relating to a design flaw.	Ensure systems hosting applications are kept up to date	The department has addressed the recommendation.
		Prevent simultaneous logins	The ConnectND team is evaluating the security risk versus the loss of business functionality. The department considers the recommendation a low-risk recommendation.

Independent Verification and Validation

The committee received information from a representative of SysTest Labs regarding independent verification and validation. The committee learned approximately 34 percent of all information technology projects are considered successful, 15 percent of all information technology projects fail, and 51 percent experience budget and schedule overruns or lack critical features and requirements that make for a less than satisfactory outcome. Independent verification and validation is a systems development discipline that helps organizations build quality into the software during the software life cycle. Verification is concerned with checking that the system is well-engineered, and validation is concerned with checking that the software developed meets the user's needs. The key focus areas for independent verification and validation are:

- Requirements verification - Confirm the software and interface requirement specifications are consistent with the state requirements in a way that is unambiguous, complete, consistent, testable, and traceable.
- Design verification - Verify that design specifications documents are consistent and reflect the requirements and needs of the project.
- Software test plan and software test verification - Review for effective test coverage.
- Implementation verification - Verify that approved standards and practices are followed for coding, documentation, naming, data dictionary terms, etc.
- Application verification - Provide for the verification of adherence to software test plans. Replication of some tests through the independent verification and validation process helps ensure correctness and perceived weaknesses in design, and previously undetected errors are documented.
- Process validation - Ensure that client standards and industry best practices are being employed to develop the product or execute the project.

The committee learned independent verification and validation typically cost between 5 percent and 15 percent of development costs. Independent verification and validation make software developers and project teams more aware of quality issues and may assist in making decisions relating to project schedule, cost, and scope.

Statewide Longitudinal Data System

The committee received information from representatives of the Information Technology Department regarding the Statewide Longitudinal Data System Initiative. The committee learned Section 7 of House Bill No. 1021 (2007), codified as NDCC Section 15.1-02-18, establishes a Statewide Longitudinal Data System Committee consisting of the chancellor of the North Dakota University System, the Superintendent of Public Instruction, the Chief Information Officer, the director of the Department of Career and Technical Education, the executive director of Job Service North Dakota, the commissioner of the Department of Commerce, the executive director of the Department of Human Services, and one person appointed by the Governor. The committee is to:

- Develop a proposal and budget for a statewide longitudinal data system.
- Recommend policies, procedures, and guidelines to protect privacy and security of personal information.
- Provide recommendations to the Information Technology Committee and the Workforce Committee on the proposed system and the long-term role of the FINDET system.

The committee learned the Statewide Longitudinal Data System Committee awarded a contract to Claraview for assistance with a plan for a statewide longitudinal data system. Claraview identified the following themes regarding a proposed statewide longitudinal data system:

- There is strong support across state agencies to share key information and leverage the benefits of longitudinal data analysis that a statewide longitudinal data system can provide.
- There are data quality challenges surrounding the implementation of a statewide longitudinal data system that must be solved to achieve a successful project.
- Opportunities exist for each state agency to enhance its data warehousing and data analysis capabilities.

Claraview identified the following policy challenges to be considered in designing and selecting an approach to a statewide longitudinal data system:

- A process needs to be developed for maintaining the state ID in a student's postsecondary records for a former North Dakota kindergarten through grade 12 student transitioning to higher education.
- The University System needs to adopt a process for enrolling or registering workforce training program students in the ConnectND system upon their participation in University System workforce training programs.
- The statewide longitudinal data system needs to be compliant with federal privacy laws and should meet the Data Quality Campaign's 10 essential elements and fundamentals for P-12 longitudinal data systems.

Claraview identified the following recommendations:

Data warehousing capabilities	Implement a statewide longitudinal data warehouse
	Implement a kindergarten through grade 12 data warehouse
	Implement agency-specific data warehouses
	Allow continued Viewpoint--kindergarten through grade 12 data warehousing system--rollout among school districts
	Define a data integration strategy
Reporting	Relocate and reconfigure FINDET
	Select a business intelligence reporting tool
Business process reengineering	Implement an education and workforce council
	Implement formal data quality processes
Operational support	Make the PowerSchool application available to all kindergarten through grade 12 schools
	Educate users to develop data analysts
Data governance	Align student identifiers
	Implement agency-based data governance councils
	Establish and enforce longitudinal data systemwide data standards
	Mitigate interagency data sharing issues Implement a master client index solution
Roadmap implementation	Develop an action memorandum

The committee learned the Statewide Longitudinal Data System Committee has approved the recommendations and is working on developing an implementation plan and budget for the project. The Information Technology Department plans to request $6 million from the general fund for the 2009-11 biennium for beginning implementation of a statewide longitudinal data system.

North Dakota Health Information Technology Steering Committee

The committee received information from representatives of the North Dakota Health Information Technology Steering Committee regarding the implementation of health information technology in North Dakota. The committee learned the North Dakota Health Information Technology Steering Committee was established in 2006 and formalized in the North Dakota Century Code by the 2007 Legislative Assembly. The mission of the committee is to facilitate the adoption and use of health information technology and exchange to improve health care quality, patient safety, and overall efficiency of health care and public health services in North Dakota.

The committee learned the North Dakota Health Information Technology Steering Committee with assistance from the University of North Dakota School of

Medicine and Health Sciences Center for Rural Health completed a survey of hospitals and long-term care facilities regarding health information technology planning and implementation, barriers to electronic medical record adoption, and health information technology staff support. The survey results indicate North Dakota's rural facilities have shortages of technical staff to support and implement health information technology, face financial challenges obtaining the capital to acquire electronic medical records and other health information technology tools, and have limited access to technical assistance resources to guide their efforts. A consultant hired to review the survey results provided the following recommendations for the state to proceed with adopting health information technology:

- Create a formal organization within the state charged with coordinating health information technology efforts and potentially governing a health information exchange initiative.
- Develop a North Dakota strategic plan for implementing and sustaining a statewide electronic health information exchange.
- Create a state-funded grant or loan program to support rural and public health entities in the implementation of health information technology-driven quality improvement programs.
- Develop health information technology training programs for current staff at health care facilities as well as for the future.
- Implement a peer-to-peer health information technology support program for rural health care provider organizations.
- Sponsor rotating rural health information technology technical support teams to assist organizations that do not have the necessary staff for the implementation of these types of projects.

The committee learned the North Dakota Health Information Technology Steering Committee and stakeholder workgroups are utilizing the survey findings and consultant recommendations to continue developing a plan for facilitating the adoption of technology in rural and urban entities.

COMMITTEE RECOMMENDATION

The committee recommends Senate Bill No. 2041 to amend NDCC Section 54-59-21 relating to the Criminal Justice Information Sharing Board to expand the board's membership to include the existing three members--the Chief Justice of the Supreme Court, the Attorney General, and the Chief Information Officer--and nine additional members, including the director of the Department of Emergency Services Division of State Radio, the director of the Department of Corrections and Rehabilitation, the Superintendent of the Highway Patrol, the chief of the Bureau of Criminal Investigation, the director of the Department of Transportation, a representative of a city police department, a representative of a county sheriff's office, a state's attorney, and one at-large member appointed by the Governor. The bill also provides that board members who are not state employees are entitled to compensation of $75 per day and mileage and expenses as provided by law for state employees to be paid by the Information Technology Department.

JUDICIAL PROCESS COMMITTEE

The Judicial Process Committee was assigned six studies. House Concurrent Resolution No. 3008 (2007) directed a study of the issues of fairness, equity, and the best interests of children as they relate to issues of child custody and visitation. By Legislative Council directive, the scope of this study was limited to a study of the best state practices relating to child custody. Section 1 of House Bill No. 1213 (2007) directed a study of the current state exemptions for bankruptcy and the desirability of updating these exemptions. Section 2 of Senate Bill No. 2284 (2007) directed a study of the exemption provisions found in North Dakota Century Code (NDCC) Chapter 28-22, including determining whether the exemptions in the current form continue to serve the historical purposes of protecting debtors from creditors and providing debtors with the basic necessities of life, so that debtors will not be left destitute and public charges of the state. Because of the similarity in the studies directed by the two bills, the two studies were combined into one comprehensive study.

House Concurrent Resolution No. 3056 (2007) directed a study of the search for and identification of missing persons. House Concurrent Resolution No. 3013 (2007) directed a study of the statutes and institutional resources relating to the domestic violence protection order process, including criminal cases for alleged violation of protection orders. House Concurrent Resolution No. 4028 (2007) directed a study of the feasibility and desirability of establishing a paternity registry.

The Legislative Council delegated to the committee the responsibility under NDCC Section 19-03.1-44 to receive 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. The Legislative Council also delegated to the committee the responsibility under Section 54-61-03 to receive an annual report from the director of the Commission on Legal Counsel for Indigents containing pertinent data on the indigent defense contract system and established public defender offices.

Committee members were Representatives Shirley Meyer (Chairman), Chris Griffin, Dennis Johnson, Nancy Johnson, Joyce Kingsbury, Lawrence R. Klemin, Kim Koppelman, William E. Kretschmar, Lee Myxter, and Lisa Wolf and Senators JoNell A. Bakke, Tom Fiebiger, Curtis Olafson, and Constance Triplett. Representative Dawn Marie Charging was a member of the committee until her resignation from the Legislative Assembly.

The committee submitted this report to the Legislative Council at the biennial meeting of the Council in November 2008. The Council accepted the report for submission to the 61st Legislative Assembly.

CHILD CUSTODY - BEST STATE PRACTICES STUDY

North Dakota Law Regarding Child Custody and Visitation Orders

Child Custody

Child custody determinations are based on North Dakota statutes. North Dakota Century Code Section 14-09-04 provides that the mother and father of a legitimate unmarried minor child are entitled equally to custody of the child. Under Section 14-09-05, when maternity and paternity of an illegitimate child are positively established, the custody rights are equal as between the mother and father and must serve the best interests of the child.

Child custody often becomes an issue when a mother and father live separate and apart from each other. North Dakota Century Code Section 14-09-06 provides that "[t]he husband and father and wife and mother have equal rights with regard to the care, custody, education, and control of the children of the marriage, while such husband and wife live separate and apart from each other, and when they so live in a state of separation without being divorced. . . ."

According to NDCC Section 14-09-06.1, child custody determinations must promote the best interests and welfare of the child. Regardless of whether the parents are married, the factors contained in Section 14-09-06.2(1) must be considered in determining the best interests and welfare of a child. These factors include the love, affection, and other emotional ties existing between the parents and child; the capacity and disposition of the parents to give the child love, affection, and guidance and to continue the education of the child; the disposition of the parents to provide the child with food, clothing, medical care, or other remedial care recognized and permitted under the laws of this state in lieu of medical care, and other material needs; the length of time the child has lived in a stable satisfactory environment and the desirability of maintaining continuity; the permanence, as a family unit, of the existing or proposed custodial home; the moral fitness of the parents; the mental and physical health of the parents; the home, school, and community record of the child; the reasonable preference of the child, if the court deems the child to be of sufficient intelligence, understanding, and experience to express a preference; evidence of domestic violence; the interaction and interrelationship, or the potential for interaction and interrelationship, of the child with any person who resides in, is present, or frequents the household of a parent and who may significantly affect the child's best interests; the making of false allegations not made in good faith, by one parent against the other, of harm to a child; and any other factors considered by the court to be relevant to a particular child custody dispute.

Visitation

Because of their interrelated nature, visitation is frequently considered at the same time custody is

determined. North Dakota Century Code Section 14-05-22, which addresses visitation issues in divorce proceedings, provides that upon "making an award of custody, the court shall, upon request of the noncustodial parent, grant such rights of visitation as will enable the child and the noncustodial parent to maintain a parent-child relationship that will be beneficial to the child, unless the court finds, after a hearing, that visitation is likely to endanger the child's physical or emotional health."

North Dakota case law indicates that a trial court may consider the parents' attitudes regarding visitation when the court determines child custody. For example, when the trial court found a mother had a hostile attitude toward visitations between a child and father but, in contrast, the father had expressed a willingness to foster and encourage regular visitations between the mother and child, the court gave this factor significant weight in deciding to place the child in the father's custody; it was appropriate for the court to do so because visitation between a child and a noncustodial parent is presumed to be in the best interests of the child and hostility of a custodial parent toward such visitations could be detrimental to the child's best interests. *Schmidkunz v. Schmidkunz*, 529 N.W.2d 857 (N.D. 1995).

Although the North Dakota Supreme Court has determined that visitation with the noncustodial parent is presumed to be in the best interests of a child, the primary purpose of visitation is to promote the best interests of the child and not the wishes or desires of the parents. *Reinecke v. Griffeth*, 533 N.W.2d 695 (N.D. 1995).

In 1999 the Legislative Assembly considered legislation that addressed parental custody and visitation rights and duties. The legislation, codified as NDCC Section 14-09-28, provides that each parent of a child has certain custody and visitation rights and duties, including the right to access and obtain copies of the child's educational, medical, dental, religious, insurance, and other records or information and the duty to inform the other parent as soon as reasonably possible of a serious accident or serious illness for which the child receives health care treatment.

Enforcement of Custody and Visitation Orders

Enforcement of a child custody order or visitation order is essentially the same as enforcement of any court order. The enforcement tool available to a court is contempt proceedings. Additionally, NDCC Section 14-09-24 provides that in a child visitation proceeding, the court is required to award the noncustodial parent reasonable attorney's fees and costs if the court determines there has been willful and persistent denial of visitation rights by the custodial parent with respect to the minor child.

Modification

Unlike when the trial court makes an original award of custody between parents, the court must determine two issues when the trial court considers a request to modify a custody award: (1) whether, on the basis of facts that have arisen since the earlier order or on the basis of facts that were unknown to the court at the time of the earlier order, there has been a material change in the circumstances of the child or the parties since the earlier custody award; and, if so, (2) whether the modification is necessary to serve the best interests of the child. The parent seeking to modify custody has the burden of showing both that a circumstance changed significantly and that this change so adversely affected the child that custody should be changed. *Gould v. Miller*, 488 N.W.2d 42 (N.D. 1992).

The North Dakota Supreme Court has determined frustration of visitation does not in and of itself constitute a sufficient change in circumstances to warrant a change in custody. Before visitation problems justify changing custody, there must be a finding that the visitation problems worked against the child's best interests. *Blotske v. Leidholm*, 487 N.W.2d 607 (N.D. 1992). Additionally, NDCC Section 14-09-06.6 limits postjudgment custody modifications within two years after entry of a custody order unless modification is necessary to serve the best interests of the child and there is persistent and willful denial or interference with visitation, the child is in danger, or there has been a de facto change in custody.

North Dakota Century Code Section 14-09-07 limits when a custodial parent may change the residence of a child to another state. Modification proceedings frequently accompany legal proceedings initiated when a custodial parent seeks to change the residence of a child.

Mediation

Although typically in child custody cases the determination of the best interests and welfare of a child is made by the court, NDCC Chapter 14-09.1 provides for voluntary mediation in custody determinations. Section 14-09.1-02 provides that "[i]n any proceeding involving an order, modification of an order, or enforcement of an order for the custody, support, or visitation of a child in which the custody or visitation issue is contested, the court may order mediation at the parties' own expense."

Testimony and Committee Considerations

The committee received testimony and information from individuals personally affected by child custody and visitation issues, including the North Dakota Coalition for Families and Children, a group that promoted 2006 initiated measure No. 3, relating to child support and custody, in the 2006 general election. The committee also received extensive information and recommendations from the Custody and Visitation Task Force, a group formed by the State Bar Association of North Dakota to conduct an indepth review of custody and visitation laws and issues in North Dakota and other states. The committee's considerations included child custody and visitation laws, restricted licenses for nonpayment of child support, and the Supreme Court's pilot project on family law mediation.

Child Custody and Visitation Laws

As part of the committee's review of the best state practices with respect to child custody, the committee received testimony from individuals and family organizations regarding the state's child custody and visitation laws. A common theme of the testimony was that the state's child custody and visitation system is in need of improvement. According to the testimony, the current system of deciding child custody and visitation is designed to be adversarial and, consequently, does not promote cooperation between the parties and is not in the child's best interests. It was noted that the system and the state's laws do not address the diversity there is within families and fail to ensure both parents can be in the child's life. The testimony also emphasized that the system is easily manipulated by the physical custodial parent even when joint custody is awarded. A member of a coalition for families and children asserted that judges often deny custody changes based upon procedural technicalities. The testimony indicated that there is gender discrimination in the current system. It was suggested that shared parenting would resolve many of the custody and visitation problems that occur between parents.

The committee also received extensive testimony from and worked closely with the Custody and Visitation Task Force to study custody and visitation issues. The 15-member task force included judges, legislators, laymen, custody investigators, private practice attorneys, a custodial father, and a member of the clergy. The topics addressed by the task force included the use of parenting coordinators, the family court concept, the early intervention process, the primary caretaker presumption, and states that mandate parenting plans. Because the Family Law Section of the State Bar Association of North Dakota continues to study mediation and other forms of alternative dispute resolution, the task force chose not to duplicate those efforts. The task force emphasized that when looking at best state practices, both the procedure and the resources necessary to implement those procedures must be considered.

According to the testimony, the task force reviewed child custody and visitation practices in other states with an eye toward what does and does not seem to work well in North Dakota. It was noted that the child custody and visitation laws and requirements of New Hampshire, in particular, were reviewed extensively by the task force. The task force also reported that it met with proponents of failed 2006 initiated measure No. 3 as well as those individuals and organizations that were circulating a new proposed custody measure.

The first recommendation of the task force included a change in some of the terminology currently used in family law. It was recommended that the term "custody" be changed to "primary residential responsibility" and the term "visitation" be changed to "parenting time." The recommendation also included the codification of definitions of terms used to delineate the rights and responsibilities of parents to their children, including the terms decisionmaking responsibility, parental rights and responsibilities, parenting plan, parenting schedule, residential responsibility, and primary residential responsibility.

The second recommendation of the task force dealt with the concept of a parenting plan. It was recommended that in any proceeding to establish or modify a judgment providing for parenting time with a child, a parenting plan would be required to be developed and filed with the court. The recommended elements of a parenting plan included decisionmaking responsibilities, information sharing and access, transportation and exchange of the child, a procedure for review and adjustment of the plan, and methods for resolving disputes. Under the recommendation, a court could not approve a parenting plan unless the plan contained a method of resolving disputes. The committee reviewed the parenting plan forms of the state of Oregon.

The third recommendation of the task force dealt with the best interest factors used by the court for determining the custody of a child. This recommendation, it was noted, maintains the general structure of the best interest analysis while clarifying several best interest factors and adding several new best interest factors. For example, it was recommended that a new factor be added to the best interest analysis which would require a court to consider the ability and willingness of each parent to facilitate and encourage a close and continuing relationship between the other parent and the child. This new factor was recommended because both parents are important to a child. According to the testimony, this language is used by many other states and it recognizes the need of a child to be close to both parents while taking into consideration the practical reality of two parents raising a child when they do not live together. It also was recommended that the best interest factors of moral fitness and the mental and physical health of the parents be limited to the impact those factors have on the child.

The fourth recommendation of the task force was the establishment of a parenting coordinator program. A parenting coordinator is a neutral person who helps to resolve visitation or "parenting time" disputes. According to the testimony, while most parents are able to work through disputes, some high-conflict families cannot work through the disputes without the assistance of the court. Because access to the court often is not as swift as some disputes require, the testimony indicated that a parenting coordinator could resolve the disputes more quickly and cost effectively than a court proceeding. The recommendation set out the duties of a parenting coordinator, the procedure for allocating the fees of the parenting coordinator between the parties, and the procedure for modifying or ending a parenting coordinator's appointment. According to the testimony, the Supreme Court would be responsible for establishing the qualifications of parenting coordinators. It was noted that a parenting coordinator would work independently but would be appointed by the court. A parenting coordinator would be employed in a way that would be similar to a guardian ad litem or child custody investigator. The testimony indicated that the use of a parenting coordinator would have a fiscal impact, but, in

the long run, resources will be saved and conflicts reduced. According to the testimony, most of the states with parenting coordinator programs only appoint a parenting coordinator if the parties are able to pay for the cost of the service. The testimony indicated that the proposals developed by the task force were approved by the State Bar Association of North Dakota Board of Governors.

The committee considered a bill draft that implemented the recommendations of the task force. The bill draft provided for changes in the terminology used in family law; required that in any proceeding to establish or modify a judgment providing for parenting time with a child, a parenting plan would be required to be developed and filed with the court; added several best interest factors; clarified several current best interest factors; and established a parenting coordinator program. The bill draft applied to those cases pending on the effective date of the legislation and any cases that have not procedurally completed the process.

Committee discussion regarding the bill draft raised the issue of whether the issue of grandparent visitation should be included in the parenting plan. The discussion indicated that while it may be possible to tie NDCC Section 14-09-05.1, the section that allows grandparents to file a motion for visitation, to the parenting plan, grandparent visitation issues usually do not arise until after the parenting plan has been developed and the custody matter has been decided. It was noted that the parties to a parenting plan would not be precluded from addressing other issues in their parenting plans, such as grandparent visitation.

Testimony in support of the bill draft indicated that the bill draft will help take family law in the state in the right direction. According to the testimony, the bill draft would help fit fathers who want to be involved in their children's lives. It was noted that the proposals would help make family law issues fairer for both parents.

Other testimony in support of the bill draft indicated that there will always be difficult domestic relations cases but the use of parenting plans, the additional best interest factor of considering which parent will best foster the relationship with the other parent, and the use of parenting coordinators will help address some of those concerns.

Committee members concluded that the bill draft helped address some of those areas of concern that have been raised by interested persons over the past several years. The committee noted that when one or more of the parties to a family law dispute want to be in conflict with another party, there is not much the system can do to alleviate that conflict, but the bill draft will help to resolve some of those conflict issues.

The committee also considered a bill draft that would have provided that unless there is evidence of domestic violence, upon the request of either party for joint custody, the court would be required to use a rebuttable presumption that joint custody is in the best interests of the child.

Testimony in support of the bill draft indicated that 23 states have a preference for joint custody. According to the testimony, the bill draft would be compatible with the recommendations proposed by the task force. It was noted that bill draft would not infringe on the court's ability to make determinations based upon the best interest standard.

Testimony in opposition to the bill draft indicated that if joint custody means equal or "50/50" custody, such arrangements can be difficult for the child, especially if the parents do not live in the same school district. According to the testimony, it does not make sense to presume that equal time with each parent is in the best interests of the child. It was also noted that a presumption of joint custody may not be compatible with the other best interest factors.

The committee concluded that the bill draft should not be recommended to the Legislative Council.

Restricted Operator's License Bill Draft

During the course of the committee's study of child custody and visitation issues, the committee received testimony from an individual who was concerned about discrepancies in the amount of his child support obligation and the difficulty in obtaining an accounting from the Department of Human Services. In response to these concerns, the committee received testimony from the Department of Human Services on the issue of obtaining an accounting of child support obligations as well as on the issue of the suspension of an operator's license for the nonpayment of child support.

The committee received testimony that indicated because all child support payments flow through a centralized state disbursement unit--Child Support Enforcement--clerks are becoming more efficient. This is due in part to the single set of records and customers who have one place in the state to call for an account status. According to the testimony, outstanding balances are updated for a number of reasons. It was noted that a misinterpretation of a court order could result in all subsequent accruals being incorrect. Other reasons for incorrect accounts may be that payments were made to another jurisdiction and Child Support Enforcement was not informed, payments were withheld from an obligor's paycheck but were not forwarded for disbursement, a parent paid the other parent directly instead of sending the money to the state disbursement unit, or the state or the employer may have made a mistake when disbursing the funds.

According to the testimony, reasonable steps to correct and maintain accurate data have been taken. These steps include the hiring of more staff to handle customer calls and a mailing to parents to confirm balances. The testimony indicated that each month the program sends notices to people with arrears informing them that the records indicate an overdue balance and that the program will be filing one-time tax refund offset and credit reporting notices. This notice gives those parents an opportunity to identify differences and reconcile the accounts. The program offers a number of portals to parents to ensure their data is accurate and to learn their current status. If a parent believes the parent's account information is not accurate, a comparison can be done to identify the reason for the discrepancy. This includes a month-by-month

comparison of debts and receipts to determine the specific months that are unpaid in an effort to pinpoint the discrepancy. The program encourages parents to periodically obtain and review their account information to ensure the data is accurate.

Regarding driver's license suspensions, driver's licenses can be suspended for nonpayment of child support by the courts as part of the contempt proceedings and by Child Support Enforcement as part of the enforcement process. In 2003 the Legislative Assembly authorized administrative license suspension, including driver's licenses, as part of the simplification of enforcement activities and to better work with obligors before arrearages reached the point of being unmanageable. This legislation led to an increase in the number of suspended licenses as well as an increase in child support payments. Because many obligors are unable to immediately satisfy their arrears, the tool of driver's license suspension helps in efforts to negotiate a payment plan that will enable the obligor to pay the outstanding balances over a 10-year period. The flexibility Child Support Enforcement was given has allowed the program to reinstate suspended licenses for cooperative obligors. It was noted that there may be a limited need for restricted driver's licenses or "work permits." As of June 2, 2008, there have been 955 administratively and 63 judicially suspended driver's licenses. Child Support Enforcement has payment plans with 688 obligors who know their licenses will be suspended if they do not follow through on their payment plans. It was noted that Child Support Enforcement does not want licenses, but they do want parents to take care of their children. The department contended that it is unclear whether Child Support Enforcement currently has the authority to issue restricted driver's licenses.

As a result of the information regarding the suspension of operator's licenses for the nonpayment of child support or the failure to obey a subpoena, the committee considered a bill draft that authorized the state agency, which is the Department of Human Services, to issue a restricted operator's license to an obligor or an individual who fails to comply with a subpoena which could only be used during that obligor's or individual's normal working hours. The committee noted that the state agency would likely work with the Department of Transportation to address the implementation issues of the bill draft. The testimony regarding the bill draft indicated that when a restricted operator's license is issued, the Department of Transportation limits the times that the driver may be driving and the routes a driver may drive.

Family Law Mediation Pilot Project

The committee received testimony regarding the Supreme Court's family law mediation pilot project. During the 2007 legislative session, the court requested and received funding to provide mediation services to litigants involved in custody and visitation disputes. The testimony indicated that mediation is one tool that has been found to be effective in reducing the acrimony of divorce and assisting parties in reaching agreements on what should happen with their case. Before this project, the court encouraged mediation by requiring attorneys to discuss the option of alternative dispute resolution with their clients. The court adopted a rule that allowed parties to ask for judge-mediated dispute resolution. This practice does not have a mechanism for informing self-represented litigants about the option of alternative dispute resolution. It was noted that the use of a district judge to mediate cases for other judges turned out to be an unpopular and rarely used option. It was also noted that many judges are not comfortable in the role of mediator. The testimony indicated that these issues led the court to request a pilot project of court-sponsored mediation in which mediation would be mandated for all cases involving custody or visitation disputes. The goal of the mediation project is to assist parties in reaching a settlement, to get parties thinking beyond the immediacy of the divorce to thinking about the challenges of parenting children from separate homes, to teach parents new ways to resolve disputes which they can use now and in the future, and to increase compliance with court orders by basing them as much as possible on the wishes of the parents.

The family law mediation pilot project is being funded by a $1 million general fund appropriation. The court has hired a coordinator for the project and is contracting with mediators for the mediation services. The Supreme Court approved the administrative order and protocol for the family mediation pilot project in February 2008. Since that time the project has advertised for, selected, and contracted with mediators to provide mediation services; provided training for the contracted mediators; developed a mediator mentoring program for new mediators; requested and received proposals for an independent evaluation of the program; selected and contracted with an independent evaluator to conduct the evaluation; collected preimplementation data; and developed and implemented an evaluation plan. Eleven mediators provide mediation services for the program--six in the Grand Forks area and five in the Bismarck area. Eight mediators are attorneys and three mediators hold social science degrees. On March 1, 2008, the pilot project went into effect and clerks began referring any civil proceeding in which legal custody, physical custody, or visitation with respect to a child is an issue. As of the report to the committee, 66 cases from the two pilot districts--the South Central and Northeast Central Judicial Districts--had been referred to the program. Of those 66 referrals, 42 had been accepted into the program. The cases not accepted were screened out due to settlements, domestic violence issues, or one party was living out of state. In four of the five completed cases, all issues were resolved through the mediation process. It was noted that the cases averaged 4.2 hours of combined mediation orientation and mediation, with an average cost of $714. According to the testimony, the court plans to include in its budget request funding to continue the pilot project for at least one year into the next biennium. It was noted that the court would like to expand the project to the remainder of the units in the state. If the project proves to be sufficiently effective, a sliding fee scale may be implemented.

Recommendations

The committee recommends Senate Bill No. 2042 to provide for changes in the terminology used in family law; require that in any proceeding to establish or modify a judgment providing for parenting time with a child, a parenting plan would be required to be developed and filed with the court; add several best interest factors; clarify several current best interest factors; and establish a parenting coordinator program. The bill would apply to those cases pending on the effective date of the legislation and any cases that have not procedurally completed the process.

The committee recommends House Bill No. 1038 to authorize the Department of Human Services to issue a restricted operator's license to an obligor or an individual who fails to comply with a subpoena which may be used only during that obligor's or individual's normal working hours.

EXEMPTIONS FROM JUDICIAL PROCESS STUDY

Background

A debtor who wants to keep property from creditors and the bankruptcy trustee has the right to claim certain items of property exempt from process. The Constitution of North Dakota as well as various North Dakota statutes provide for a debtor's right to exemptions.

In addition to the statutory and constitutional provisions, federal and state courts have held that there are public policy reasons for providing exemptions. The North Dakota Supreme Court, in *Seablom v. Seablom*, 348 N.W.2d 920 (N.D. 1984), stated "[e]xemptions statutes are remedial and are to be liberally construed to effectuate the purposes of their enactment. Exemption statutes have two major objectives: to provide a fresh start to the debtor who is being sued and to aid society by reducing the number of debtors who need public assistance."

Federal Bankruptcy Laws

Article I, Section 8, of the United States Constitution authorizes Congress to enact "uniform Laws on the subject of Bankruptcies throughout the United States." Congress has exercised this authority several times since 1801, most recently by adopting the Bankruptcy Reform Act of 1978, codified in Title 11 of the United States Code, commonly referred to as the Bankruptcy Code. The Bankruptcy Code has been amended several times since 1978, most recently in extensive amendments in 2005 through the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005.

While bankruptcy cases are filed in United States bankruptcy court, which are units of the United States district courts, and federal law procedurally governs bankruptcy cases, state laws are often applied when determining property rights. For example, law governing the validity of liens or rules protecting certain property from creditors, known as exemptions, are derived from state law.

North Dakota Law Regarding Exemptions

Section 522 of the Bankruptcy Code, which provides for the property that is exempt, permits a state to opt-out of the federal exemptions. North Dakota opted out of the federal bankruptcy exemption scheme in 1981. North Dakota Century Code Section 28-22-17 provides, in part, that ". . .residents of this state are not entitled to the federal exemptions provided in section 522(d) of the Bankruptcy Reform Act of 1978. The residents of this state are limited to claiming those exemptions allowable by North Dakota law." The primary exemptions relating to judicial process and bankruptcy are contained in Chapter 28-22 and Section 47-18-01. Other exemptions are contained throughout the Century Code.

North Dakota Century Code Chapter 28-22 Exemptions

North Dakota Century Code Chapter 28-22 sets forth the property that is exempt from process in North Dakota. The "process" to which this chapter refers includes attachment, levy and sale upon execution, bankruptcy, and any other final process issued from any court. Chapter 28-22 includes exemptions that can be divided into two categories.

The first set of exemptions specifically describes items of property and classes of exempt property. For example, NDCC Section 28-22-02 exempts as "absolute exemptions:" family pictures, a family pew, the family Bible, school books, the family library, wearing apparel and clothing, food and fuel, the homestead as defined and limited by law, a certain amount of crops and grain, insurance benefits resulting from insurance covering the absolute exemptions, and any house trailer or mobile home occupied as a residence by the debtor. In addition, Section 28-22-03.1 provides for a motor vehicle exemption not to exceed $1,200, annuities, retirement plans, life insurance, and payments traceable to wrongful death and personal injury awards, a Social Security benefit, and veteran's disability pension benefits. Section 28-22-04 provides exemptions for miscellaneous books and musical instruments not exceeding $1,000 in value, household and kitchen furniture not exceeding $1,000 in value, livestock and farm implements not exceeding $4,500 in value, the tools and implements of any mechanic not exceeding $1,000 in value, and the library and instruments of any professional person not exceeding $1,000 in value. Section 28-22-19 exempts from liability for debts of the person "[a]ll pensions or annuities or retirement, disability, death, or other benefits paid or payable by, or amounts received as a return of contributions and interest from, a retirement system established pursuant to state law by the state except as provided by sections 15-39.1-12.2, 39-03.1-14.2, 54-52-17.6, and 54-52.2-03.3, a state agency, a political subdivision of the state, or a firefighters relief association for retirement, annuity, pension, disability benefit, or death benefit purposes."

The second set of exemptions applies to any property the debtor seeks to exempt. These exemptions set a dollar value limit on property that the debtor is permitted to shelter. North Dakota Century Code Section 28-22-03

allows a debtor, as head of a family, to take a $5,000 exemption in any property. Section 28-22-02 allows a single person to take a $2,500 exemption in any property. Section 28-22-03.1(1) permits an additional $7,500 in any other property if the debtor does not use the homestead exemption. Section 28-22-16 provides that in addition to the absolute exemptions against process, the debtor may take a $500 exemption on property of any kind.

North Dakota Century Code Section 47-18-01 Homestead Exemption

North Dakota Century Code Section 47-18-01 provides for the homestead exemption. This section provides that the homestead of any person residing in this state consists of the land upon which the person resides and "the dwelling house on that land in which the homestead claimant resides, with all its appurtenances, and all other improvements on the land, the total not to exceed eighty thousand dollars in value, over and above liens or encumbrances or both." This section also provides that the homestead is exempt from judgment lien and from execution or forced sale, except as otherwise provided in the chapter. According to this section, the homestead may not include different lots or tracts of land unless they are contiguous.

Testimony and Committee Considerations

To address the issues related to the state's exemptions from judicial process, the committee sought the testimony and recommendations of several experts in the area of exemptions and bankruptcy law. These individuals included several attorneys who practice in the area of debtor, creditor, and bankruptcy law, a bankruptcy trustee, and a law professor.

The testimony from these individuals indicated that some of the exemptions contained in North Dakota law are archaic and others need to be updated. For example, the testimony noted that the mobile home exemption is vague and needs clarification, and there is a need for clarification of the annuities exemption.

The committee's deliberations centered on the changes that were recommended to the state's exemption scheme. To address the recommended changes, the committee considered four bill drafts.

The Need for Clarification and Updating of Exemptions

The committee received testimony that recommended a number of changes to the exemptions contained in NDCC Chapter 28-22. The testimony recommended several changes to Section 28-22-02, which provides for absolute exemptions. According to the testimony, several of the absolute exemptions should be updated and clarified. For example, this section provides for an exemption for the family Bible. It was recommended that this section be changed to provide for an exemption for "one family Bible or other family primary religious text." The testimony also noted that Section 28-22-02 contains an exemption for wearing apparel and clothing. It was noted that because clothing is specifically mentioned, wearing apparel has been interpreted to refer to something other than clothing, such as jewelry. According to the testimony, this exemption is in need of clarification. Section 28-22-02(6) allows for an exemption of fuel necessary for one year. The testimony indicated that courts have held that the fuel must be "in kind" and actually on the debtor's property. The debtor cannot have money in an account that is designated as money for fuel. It also was noted that it is not clear if the fuel exemption applies to fuel to heat a home or fuel to propel a vehicle or both.

North Dakota Century Code Section 28-22-02 exempts a house trailer or mobile home occupied as a residence by the debtor or the debtor's family. The testimony noted that a house trailer or mobile home may exceed $80,000 in retail or market value. Because this statute does not have a dollar limit, it may be possible for someone living in a mobile home to get more benefit from the exemption than someone living in a stick-built home using the $80,000 homestead exemption. It was recommended that the house trailer or mobile home value be limited to $80,000. Section 28-22-03 allows for an additional exemption of $5,000 in personal property. The testimony indicated that although this statute is fairly clear about being limited to personal property, there have been numerous attempts by debtors to try to spread this wild card exemption onto real estate. It was recommended that it may be appropriate to add language that clarifies that the exemption cannot be used to exempt a real estate interest of any kind.

The homestead exemption law in North Dakota limits the homestead to $80,000 equity over liens and encumbrances. The federal Bankruptcy Code of 2005 was amended to limit homestead exemptions to $125,000. It was noted that the exemptions in North Dakota seem to allow most debtors to stay in their homes.

North Dakota Century Code Section 28-22-03.1 raises the issue of whether the term "resident" is different from the term "head of a family." This section allows a resident to take, in lieu of the homestead exemption, an additional exemption of up to $7,500. The North Dakota Supreme Court has not dealt with this issue, but the bankruptcy court has refused to allow this exemption to a North Dakota resident if that resident's spouse has chosen the homestead exemption under Section 28-22-02. The testimony noted that the bankruptcy court approach to this makes sense and it is probably what the Legislative Assembly intended. It was noted, however, that an argument by a debtor could be made that if one person in a married couple is considered the head of a family, the other person could be considered a resident. The head of a family could choose the homestead exemption while the other person could choose the "in lieu of" homestead exemption as a resident. It was suggested that this statute could be clarified to provide that the resident exemption is not available if the resident exemption claimant, the spouse of the resident exemption claimant, or other head of a family of the resident exemption claimant has chosen the homestead exemption.

North Dakota Century Code Section 28-22-03.1 provides for a motor vehicle exemption of $1,200.

According to the testimony, this has been interpreted to mean $1,200 in equity over and above liens and encumbrances. It was suggested that this statute could be amended to clarify that point. Section 28-22-03.1, which addresses pensions, annuities, and life insurance policies, provides for a $100,000 per account or $200,000 maximum exemption. This section provides that individual retirement accounts (IRAs), such as the Roth IRA and 401k accounts, are totally exempt. It was noted that there is a concern that a debtor might try to convert nonexempt property into exempt property in the face of a threatened judgment execution by, for example, selling a lake cabin that does not qualify as a homestead and putting the money into an exempt IRA. It was suggested that limiting language could be added which provides that any contributions to any of the plans made within one year before the issuance of the execution and which contributions are more than the amounts allowed by the governmental regulation to be tax-exempt for the year of contribution are not exempt from process.

The committee considered two bill drafts that attempted to clarify and update the state's exemptions from judicial process. The first bill draft provided clarification of some of the exemptions contained in NDCC Chapter 28-22. The bill draft clarified several of the absolute exemptions; limited the use of the exemption that is available in lieu of the homestead exemption; clarified that certain exemptions are available only to the head of a family; clarified the motor vehicle exemption; and for the purposes of claiming an account as exempt, limited the time period within which an individual may contribute to a retirement account.

Testimony in support of this bill draft indicated that changes made by this bill draft would be useful in interpreting and understanding the state's exemptions. The testimony indicated that the changes would provide much needed clarification of NDCC Chapter 28-22.

The second bill draft considered by the committee removed the $100 limit placed on the value of family books that are exempt; allowed an exemption for a house trailer or mobile home to be taken in lieu of the homestead exemption; removed the "in lieu of" homestead exemption of $7,500; increased the additional exemption for head of a family from $5,000 to $7,500; increased the motor vehicle allowance from $1,200 to $2,950; clarified the exemptions for pensions, annuity policies, and life insurance; and increased or eliminated the maximum amount of compensation that may be claimed as exempt on account of the debtor's right to receive or property that is traceable to wrongful death or personal bodily injury.

Testimony regarding the second bill draft indicated that the bill draft provides some much needed updating of the current exemptions. The testimony, however, did not support the repeal of the "in lieu of" homestead exemption. The testimony expressed support for the proposed change that would allow the debtor to claim a mobile home as a dwelling house as part of the homestead.

Upon consideration of these two bill drafts, the committee elected to merge the two bill drafts into a single bill draft. With the exception of the "in lieu of" homestead exemption, the merged bill draft included all the changes proposed in the two previously considered bill drafts.

Testimony in support of the merged bill draft indicated that changes would go a long way to address many concerns and uncertainties that have arisen in bankruptcy cases over the years. It was noted that one issue that may need to be addressed is whether both spouses may claim an exemption as head of a family. According to the testimony, there may need to be a clarification that only one spouse can be the head of a family and therefore entitled to the exemption. It was also noted that the United States Supreme Court has held that Employee Retirement Income Security Act-qualified plans are not property that is subject to claims in bankruptcy. According to the testimony, although the bill draft provides that the retirement funds must have been in effect for at least one year, there may need to be more clarification that the funds have been on deposit for at least one year. The testimony also indicated that in light of a United States Supreme Court decision, the limits on the amounts in the retirement accounts are likely to be preempted by the decision, but the timing of the fund may not be preempted.

Other testimony regarding the merged bill draft indicated that there are concerns that the property of the judgment debtor and the debtor's family must be claimed as exempt. It was noted that this requirement may allow levy upon property of family members and not just the judgment debtor. In response to this concern, the committee amended the merged bill draft to remove the language relating to the property of family members.

Single Exemption Theory

Although the Constitution of North Dakota indicates that certain exemptions are a right and are necessary to provide for the comforts and necessities of life, the testimony received by the committee indicated that the constitution does not specify what the exact exemptions should be but indicates that "all heads of families" should be entitled to a homestead the value of which is to be limited and defined by law. The constitution also provides that a reasonable amount of personal property must be exempt. The kind and value of both the homestead and personal property exemptions are to be fixed by law. According to the testimony, an interpretation of that provision is that there is no requirement that the Legislative Assembly provide real estate as an exemption. It was noted that this is further evidenced by the "in lieu of" homestead exemption that has been codified in NDCC Section 28-22-03.1(1).

It was recommended that the Legislative Assembly establish one exemption of a fixed dollar amount. According to the testimony, providing one exemption of a fixed dollar amount would eliminate the need for the Legislative Assembly to pigeonhole exemptions into specific areas. For example, if the fixed dollar amount was $80,000, the debtor could choose to use the entire sum toward the exemption of a homestead, or instead could choose to exempt personal property, whether it is cash, farm machinery, motor vehicles, or retirement

plans. Providing one exemption would also eliminate the need for debtors to move assets from one form to another just to claim the assets as exempt. It was argued that a single claim exemption would eliminate disputes, such as the items that constitute "wearing apparel."

Based upon this recommendation, the committee considered a bill draft that would have provided for a lump sum exemption of $40,000. Under this bill draft, this exemption would replace many of the separate exemptions that are now available. In addition to the lump sum exemption, however, a debtor still could have claimed the homestead exemption; professionally prescribed health aids; an unmatured life insurance contract owned by the debtor; the debtor's interest in certain retirement plans; and certain benefits, including Social Security benefits, veteran's disability pension benefits, disability, illness, or unemployment benefits, alimony, support, or separate maintenance. The bill draft also would have exempted payments received on account of the wrongful death of an individual of whom the debtor was a dependent.

It was suggested that going to a single exemption concept would reduce litigation because there would be no need to move assets around to fit into a scheme of exemptions. It was noted that a single exemption would prevent hiding assets. It was also noted that because more people own a computer than a church pew, a single exemption amount would allow a family to determine what is important to them.

Testimony regarding the bill draft indicated that if the state adopted a single exemption concept, the exemption should be limited to necessities. It was suggested that luxury items should not be permitted as exempted property.

Other testimony regarding this bill draft indicated that the change to a single exemption amount would be a radical change from the current exemption scheme. It was noted that a number of states have gone to the lump sum exemption method. According to the testimony, it would be very difficult to determine the appropriate amount for the lump sum exemption. The testimony also indicated that whether the homestead exemption is used or a single exemption amount, there will still be ongoing litigation.

The committee concluded that the bill draft relating to a single exemption amount should not be recommended to the Legislative Council.

Federal Exemptions Option

North Dakota Century Code Section 28-22-17 provides that North Dakota has chosen to opt-out of the federal exemptions, which allow for a broader range of exemptions. According to the testimony, the Minnesota system functions more efficiently because Minnesota allows debtors to claim either the federal exemptions or the state exemptions.

Based upon this recommendation, the committee considered a bill draft that would have given North Dakota residents, when filing a petition for bankruptcy, the option of claiming either the federal exemptions or the applicable exemptions allowable by state law.

Testimony in opposition to this bill draft indicated that adding the option of claiming the federal exemptions adds complications to the current system. According to the testimony, this bill draft would allow the federal government to dictate the state's exemptions. It was noted that bankruptcy under this bill draft would be more expensive and more complex.

The committee concluded that the bill draft granting an option of using federal exemptions or state exemptions should not be recommended to the Legislative Council.

Recommendation

The committee recommends House Bill No. 1039 to clarify and revise several of the absolute exemptions, including family books, clothing and wearing apparel, and fuel; clarify that certain exemptions are available only to the head of a family; increase and clarify the motor vehicle exemption; allow an exemption for a house trailer or mobile home to be taken in lieu of the homestead exemption; for the purpose of claiming an account as exempt, limit the time period within which an individual may contribute to a retirement account; increase the additional exemption for head of a family from $5,000 to $7,500; clarify the exemptions for pensions, annuity policies, and life insurance; and increase or eliminate the maximum amount of compensation that may be claimed as exempt on account of the debtor's right to receive or property that is traceable to wrongful death or personal bodily injury.

MISSING PERSONS STUDY

Background

North Dakota Law Enforcement

The search for and the identification of missing persons often involves cooperation and the sharing of information among federal, state, and local law enforcement agencies. The chief components of local law enforcement in North Dakota are city police departments and county sheriffs' offices. At the state level, law enforcement includes the Highway Patrol, game wardens, park rangers, and various divisions within the office of Attorney General, including the Bureau of Criminal Investigation.

The 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, under NDCC Section 39-03-09, the Highway Patrol is required to exercise general police powers over all violations of law committed on state property.

The statutory duties of the Bureau of Criminal Investigation include 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.

North Dakota Law and Programs Regarding Missing Persons

North Dakota Century Code

North Dakota Century Code Section 54-23.2-04.1 provides that State Radio has certain duties with respect to lost or runaway children and missing persons. This section requires State Radio to "[e]stablish and maintain a statewide file system for the purpose of effecting an immediate law enforcement response to reports of lost or runaway children and missing persons."

In addition, NDCC Section 54-23.2-04.2 provides for school enrollment procedures to aid in the identification and location of missing children. This section provides that if a child's parent, guardian, or legal custodian does not present proof of identity within 40 days of enrollment or if the school does not receive the school records of the child within 60 days of enrollment, the school, licensed day care facility, or school superintendent of the jurisdiction is required to notify the missing person information program provided in Section 54-23.2-04.1 and a local law enforcement authority that proof of identity has not been presented for the child.

AMBER Alert System

On August 30, 2002, the Governor signed Executive Order 2002-06, which directed the Highway Patrol, in cooperation with the Division of Emergency Management, Division of State Radio, and other state agencies, to implement a statewide AMBER Alert system by January 1, 2003. AMBER stands for America's Missing: Broadcast Emergency Response.

The AMBER Alert system exists in every state. The AMBER Alert involves a system of news bulletins that broadcast information about a missing child over the airwaves and on highway alert signs to encourage the public to help law enforcement locate a kidnapped child. According to missing person experts, the first hours following a child abduction are considered to be critical in terms of response.

According to the United States Department of Justice, AMBER Alerts have helped bring home more than 200 abducted children nationwide. In 2004 the federal PROTECT Act was passed to provide funding to help coordinate the 50 state AMBER Alert plans.

Criminal Justice Information Sharing

Criminal Justice Information Sharing is a statewide program with the mission to improve public safety by enhancing decisionmaking of law enforcement and other public safety officials. Criminal Justice Information Sharing enables the components of the state's justice systems, including state and local law enforcement, courts, state's attorneys, and corrections agencies to share justice information.

Testimony and Committee Considerations

According to the sponsor of the resolution that called for a study of the search for and identification of missing persons, there is not any national legislation nor any nationwide procedures in place for the sharing of information about the search for and identification of missing persons. North Dakota law does not provide for a procedure for law enforcement to follow when dealing with missing person cases. In 2005 the United States Department of Justice established a task force to study ways to improve the use of federal DNA databases. With the help of the task force, the National Institute of Justice--the research division of the United States Department of Justice--developed model state legislation that is intended to provide guidance to states on the entire process surrounding missing persons. During the course of this study, the committee focused much of its attention on the model legislation and whether the model legislation would be helpful to North Dakota law enforcement in handling missing person cases. The committee received testimony from an expert on the model legislation, several law enforcement officials, and the State Crime Laboratory.

Model Missing Person Legislation

According to a report from the National Institute of Justice, at any given time, there are as many as 100,000 active missing person cases in the United States. Due in part to sheer volume, missing persons and unidentified human remains cases are a tremendous challenge to state and local law enforcement agencies. More than 40,000 sets of human remains that cannot be identified through conventional means are held in the evidence rooms of medical examiners throughout the country. About 6,000 of these cases have been entered into the Federal Bureau of Investigation's National Crime Information Center database.

The National Institute of Justice reports that efforts to solve missing person cases are further hindered because many cities and counties continue to bury unidentified human remains without attempting to collect DNA samples. According to the National Institute of Justice, many laboratories may not be equipped to perform DNA analysis of human remains, especially when the samples are old or degraded. The National Institute of Justice report noted that compounding this problem is the fact that many of the country's 17,000 law enforcement agencies do not have access to or are unaware of their own state's missing person clearinghouse or the four federal databases--the National Crime Information Center, the Combined DNA Index System for Missing Persons, the Integrated Automated Fingerprint Identification System, and the Violent Criminal Apprehension Program.

In 2005 the United States Department of Justice established a task force of representatives from local, state, and federal law enforcement; forensic medicine; and victim advocacy organizations to study ways to improve the use of federal DNA databases. With the assistance of the task force, the National Institute of Justice developed model state legislation that is intended to provide guidance to states on the entire process surrounding missing persons. The model legislation:

- Requires all law enforcement agencies to accept any report of a missing person and to share it within the state and region.
- Requires law enforcement officers to notify the family about how the case will be handled.

- Suggests ways to improve the collection of information about missing persons and prioritizes high-risk cases.
- Ensures prompt dissemination of critical information to other law enforcement agencies and the public that can improve the likelihood of a safe return.
- Lays out an approach for collecting data that later can be used to help identify human remains.
- Suggests ways to improve death scene investigations and ensure the delivery of human remains to the proper examining entity.
- Ensures the timely reporting of identifying information to national databases. DNA samples must be taken within 30 days and uploaded to all relevant national, state, and local DNA missing person databases.

The committee received testimony from a representative of the California Attorney General's Missing Persons DNA Program regarding California's missing person law. California enacted its missing person law in 1989. The model missing person legislation under consideration by the committee was based primarily on California's law. It was noted that many of the concerns about California's missing person law have not materialized. One of these concerns was that in some domestic violence situations an individual may appear to be missing when the individual actually does not wish to be found. It was noted that in these cases law enforcement may confirm that the person is safe without revealing the person's location. It was also noted that concerns about jurisdiction of a missing person case have been addressed and have not been a problem.

California law provides that a risk assessment is to be done immediately upon receiving the missing person report. When law enforcement takes the report, an assessment is done. The assessment may vary depending on the individual who is missing. It was noted that the amount of time and resources that law enforcement expends on a case depends on the situation. In California the Attorney General's office is the central state agency for missing person cases. For interstate cases, the local law enforcement agency usually works with the Federal Bureau of Investigation and law enforcement in the other state.

The testimony indicated that there are as many as 15 other states that have passed similar missing person legislation. Most of the states that have passed missing person legislation have used at least portions of the model Act, with modifications depending on the specific state's needs. The legislation has led to an increase in those states in the number of bodies identified. Most states do not mandate that coroners report unidentified human remains to a central repository. The testimony indicated that the University of North Texas has received funding from the National Institute of Justice to process DNA samples free of charge for law enforcement from all states. California funds its missing person DNA program from the fee charged for the issuance of copies of death certificates. Federal law provides that the DNA analysis may be used only for the purpose of identifying or locating missing persons and any other use is prohibited. It was noted that because it is not possible to obtain DNA from cremated remains, California law provides that a body of an unidentified person may not be cremated until the jawbone is removed and retained. According to the testimony, California's missing person DNA program has been very successful. It was emphasized that every unidentified person deserves to be identified and the remains returned to the family.

The committee also received testimony from local law enforcement agencies regarding the adaptability of the procedures in the model legislation by law enforcement agencies in the state. The testimony stressed the importance of law enforcement to investigate legitimate reports of missing persons when evidence or other information exists to show the person is not simply delayed or otherwise voluntarily missing and to do everything possible to locate missing persons. The role DNA plays in the investigation of missing person cases and the identification of unidentified persons was emphasized. The testimony expressed opposition to the adoption of the model missing person legislation in its current form and emphasized that it is not advisable to codify extensive procedures. It was noted that procedures often need to be updated and having a procedure in law which cannot be revised until the next legislative session could create significant issues for law enforcement.

According to the testimony, law enforcement agencies often receive calls from concerned friends or relatives who want to report someone missing if the person has failed to come home on time from work, an appointment, or a social gathering. Basic information is gathered in these situations, but supervisors are given discretion in how these calls are handled in the initial stages. It was noted that the model legislation does not allow for any discretion in the handling of missing person reports--the model legislation states that a law enforcement agency may not refuse to accept a missing person report for any reason. According to the testimony, for those cases in which the law enforcement agency has no jurisdictional link to the missing person, the procedures set out in the model legislation would be impractical and unworkable. It was noted, however, that the model legislation contains excellent procedural guidelines that generally should be followed. It was suggested that a better approach would be to statutorily require law enforcement agencies to have a written policy concerning missing person reports with the model legislation used as model policy for departments to use as a guide in developing those policies.

The committee also received testimony from a law enforcement official who supported the adoption of the model legislation in North Dakota. The testimony indicated that the model legislation would be good for the state and would be easy to adopt. The testimony, however, recommended that language should be added to identify the party that is responsible to follow up on the missing person report. It was also suggested that once taken, the legislation should permit the missing person report to be forwarded to the law enforcement agency that would have proper jurisdiction.

In response to the testimony and information regarding the model missing person legislation, the committee considered a bill draft that established a procedure for the location and identification of missing persons. The bill draft was based upon model missing person legislation that has been adopted in a number of other states. The bill draft provided that a report of a missing person may be made to any law enforcement agency in the state, allowed the law enforcement agency to refer the missing person report to a more appropriate law enforcement agency when appropriate, set forth the information to be gathered regarding the missing person, provided for the entry of certain information regarding the missing person into state and national databases, and established a procedure for the identification and preservation of unidentified human remains.

In response to concerns from several committee members regarding the referral of missing person cases to other law enforcement agencies, the bill draft was amended to remove the prohibition that the missing person report may not be referred to another law enforcement agency if the person is a high-risk missing person. The bill draft also was amended to provide that, upon referral of a missing person case to another jurisdiction, that jurisdiction must accept or decline the responsibility for the referred case within 24 hours after receiving the request from the initial law enforcement agency.

State Crime Laboratory

During the course of the committee's study of the search for and identification of missing persons, the committee received information from a representative of the State Crime Laboratory regarding functions of the laboratory and the use of DNA for identifying missing persons. The State Crime Laboratory is divided into two units. The forensic unit deals with analysis of evidence involving arson, drugs, DNA, firearms, and trace, and the toxicology unit deals with drug screening, blood alcohol, breath instruments, and officer training for the use of intoxilyzer devices. The forensic unit works with the screening of biological evidence. According to the testimony, it is possible to obtain DNA from a number of sources with which there has been human contact, including chewing gum, stamps and envelopes, stains, doorknobs, toothbrushes, hairbrushes, sanitary pads, and bite marks. The federal DNA Identification Act of 1994 formalized the Federal Bureau of Investigation's authority to establish a National DNA Index System. Over 170 public law enforcement agencies across the country participate in the National DNA Index System. The Combined DNA Index System for Missing Persons merges aspects of forensic science and computer technology to create an effective tool for providing investigative leads and solving violent crimes. In 2000 the Federal Bureau of Investigation laboratory began developing the national missing person database program for the identification of missing and unidentified missing persons. The Combined DNA Index System for Missing Persons contains the following indexes--convicted offender, forensic, arrestees, missing persons, unidentified human remains, and biological relatives of missing persons. The missing person database program uses three indexes in the National DNA Index System, including unidentified human remains, missing persons, and biological relatives of missing persons. DNA profiles in these three indexes are searched against each other. As part of the President's DNA initiative, DNA collection kits are available to law enforcement free of charge. It was noted that to send a DNA case to a private laboratory for testing would cost approximately $6,675, which includes the cost of screening and DNA testing for five samples. The cost for the State Crime Laboratory to process the same case is $2,870. The testimony indicated that state's attorneys often demand 10 to 20 DNA samples from a crime scene. It was noted that in recent years there has been an increased demand for DNA testing.

Recommendation

The committee recommends House Bill No. 1040 to establish a procedure for the location and identification of missing persons. The bill, which is based upon model missing person legislation, establishes a uniform procedure for law enforcement to follow for locating missing persons and identifying and preserving unidentified human remains.

DOMESTIC VIOLENCE PROTECTION ORDER PROCESS STUDY

Background

Experts have described domestic violence as a pattern of behavior in which one intimate partner uses physical violence; coercion; threats; intimidation; isolation; and emotional, sexual, or economic abuse to control and change the behavior of the other partner. The abusive person might be a current or former spouse, live-in boyfriend or girlfriend, or dating partner. Domestic violence happens to people of all ages, races, ethnicities, religions, and levels of economic status. It occurs in both opposite-sex and same-sex relationships. According to the National Coalition Against Domestic Violence, about 95 percent of victims of domestic violence are women. According to this source, over 50 percent of all women will experience physical violence in an intimate relationship, and for 24 percent to 30 percent of those women, the battering will be regular and ongoing. Every state and United States territory has laws that allow its courts to issue protection orders, as do many Indian tribes.

North Dakota Domestic Violence Law

The North Dakota law regarding domestic violence is contained in NDCC Chapter 14-07.1. This chapter, which was initially enacted in 1979, provides that domestic violence "includes physical harm, bodily injury, sexual activity compelled by physical force, assault, or the infliction of fear of imminent physical harm, bodily injury, sexual activity compelled by physical force, or assault, not committed in self-defense, on the complaining family or household members."

North Dakota Century Code Sections 14-07.1-10 and 14-07.1-11 provide for the arrest procedures in a situation involving domestic violence. Section

14-07.1-15 provides for the establishment of the domestic violence and sexual assault prevention fund in the state treasury. A portion of the funds deposited into this fund are derived from the $35 supplemental marriage license fee provided for under Section 14-03-22. An estimated $340,000 from this source is expected to be deposited into the domestic violence and sexual assault prevention fund during the 2007-09 biennium. Section 14-07.1-16 authorizes the State Department of Health to administer the money in this fund to domestic violence sexual assault organizations. This section provides that up to 10 percent of the fund may be allocated to the state domestic violence sexual assault coalition, as recognized by the State Department of Health.

Domestic Violence Protection Orders

Under NDCC Section 14-07.1-02, a victim of domestic violence may obtain a domestic violence protection order. A protection order is a court order that is designed to restrain, or keep someone from committing, violent and harassing behavior. An action for a protection order may be brought in district court by any family or household member or by any other member with a sufficient relationship. Upon receipt of the application, the court orders a hearing to be held not later than 14 days from the date of the hearing order. Service must be made upon the respondent at least five days before the hearing. Upon a showing of actual or imminent domestic violence, the court may issue a domestic violence protection order after due notice and a full hearing.

North Dakota Century Code Section 14-07.1-02(5) authorizes a court to issue a dual protection order restricting both parties if each party has commenced an action and the court, after a hearing, has made specific findings of fact that both parties committed acts of domestic violence and that neither party acted in self-defense.

North Dakota Century Code Section 14-07.1-06 provides the penalty for violating a domestic violence protection order or an ex parte temporary protection order. The first violation of any order is a Class A misdemeanor and also constitutes contempt of court. A second or subsequent violation of either order is a Class C felony.

If the application for a domestic violence protection order alleges an immediate and present danger of domestic violence to the applicant, NDCC Section 14-07.1-03 authorizes the court to order an ex parte temporary protection order pending a full hearing. An ex parte temporary protection order remains in effect until an order issued under Section 14-07.1-02 is served. A full hearing must be set for not later than 14 days from the issuance of the temporary order.

North Dakota Century Code Section 14-07.1-08 provides that an emergency protection order may be ordered when the court is not available for an ex parte temporary protection order. Under this section, an emergency protection order may be signed by a local magistrate, such as a municipal judge or a small claims court referee. This emergency protection order can provide the same relief as the temporary order. An order issued under this section, however, expires in 72 hours unless it is continued by the court or the local magistrate in the event of continuing unavailability of the court.

Testimony and Committee Considerations

During the course of its study of the domestic violence protection order process, the committee received testimony from those involved in the domestic violence protection order process, including a victim advocacy organization, judges, and attorneys. The committee also received testimony from the North Dakota Supreme Court regarding the findings of the Gender Fairness in the Courts study with respect to the domestic violence protection order process. The committee's considerations focused on the gender bias and fairness in the domestic violence protection order process and efforts to improve the domestic violence protection order process.

Gender Bias and Fairness in the Domestic Violence Protection Order Process

The committee received testimony regarding the recommendations of the Final Report of the North Dakota Commission on Gender Fairness in the Courts. The Gender Fairness Implementation Committee was assigned the responsibility to "oversee the development of a detailed course of action to implement recommendations of the Final Report of the North Dakota Commission on Gender Fairness in the Courts" and to "monitor the progress of the Judicial Branch toward eradicating gender bias in the courts." The report, which was based on surveys, questionnaires, and discussions with lawyers, child support personnel, domestic violence advocates, victim and witness assistants, and judicial system employees, indicated that education and awareness efforts have affected positively how these domestic violence cases are handled and that professional conduct in the proceedings has improved. It was noted, however, that the survey question that generated a general concern was whether the current domestic violence protection order process within the court system serves both parties equally in terms of resources, review of petitions, and dispositions. According to the report, judicial officers raised a general concern that there are unequal resources in these proceedings. A review of some of these responses suggested that unequal resources meant the unavailability of a domestic violence advocate for both parties when dual protection petitions are filed and the unavailability of an attorney to represent a respondent who cannot afford one. It was noted that the responses are not a criticism of the work done by the victim advocacy organizations, but rather was a matter of funding for more advocates.

The testimony indicated that because the domestic violence protection order process is a civil proceeding, the respondent must hire an attorney to represent the respondent in the proceeding. There is not a constitutional requirement to provide legal counsel in civil matters. The process is unique because it is a civil process that invokes a criminal penalty if violated. If the

respondent is unable to afford an attorney, the respondent must look for legal services at no cost or at a reduced cost. It was noted that North Dakota has very limited resources for these parties. North Dakota Supreme Court Administrative Rule 34, which authorizes the use of advocates for domestic violence cases, was amended in 2005 to allow entities other than the North Dakota Council on Abused Women's Services to be a certifying entity qualified to train and certify domestic violence advocates. A committee of the Supreme Court is considering the development of an informational brochure for respondents who wish to petition for domestic violence protection orders.

The testimony indicated that a second area of concern reflected in the responses was that the protection order process is being used to gain an advantage in custody disputes. North Dakota Century Code Section 14-07.1-02.1 provides a penalty for domestic violence protection order petitions that are false and not made in good faith.

According to the testimony, progress has been made in eliminating gender bias in the adjudication and disposition of domestic violence protection orders; however, there continue to be concerns as to whether more resources and services should be made available for those respondents who cannot afford an attorney or who do not have access to advocates. The testimony indicated that additional funding for respondents would help balance the resources available to each party. It was noted that in some instances, the respondent also may be a victim of domestic violence but does not have access to an advocate. When both parties allege domestic violence, the party who goes to the advocate first is the one who is likely to receive assistance.

Testimony from a domestic violence victim advocacy organization discussed the role of the organization in the domestic violence protection order process. The process for applying for a temporary protection order begins with an individual obtaining an application in which the individual outlines the history of abuse and describes the most recent, specific incident of abuse. The petition is presented to the district court pro se, with an attorney, or with the assistance of an advocate certified under North Dakota Court Rule 34. A hearing is scheduled at which time the judge will decide if the order is granted. If the temporary order is granted, it is served on the respondent who may appear at a full hearing. At that hearing the court hears from each party and determines whether to continue the order. The North Dakota Supreme Court sanctioned the role of domestic violence advocates in this process in 1992 by outlining specific activities in which advocates can engage relating to the process, including sitting at counsel table, giving written or oral statements to the court, and assisting the petitioner with printed forms. There are codified training requirements for advocates for an initial training and 10 hours of continuing education each year. All certified advocates must be affiliated with a domestic violence agency. In 2006, 4,319 new victims sought assistance from 19 advocacy centers; 734 temporary protection orders were granted with the assistance of domestic violence advocates; 34 temporary order petitions were denied; and 30 orders were denied at the full hearing.

The testimony indicated that the advocacy network is very aware of the allegations that protection orders are easy to obtain and that the process is sometimes abused out of spite or to gain the upper hand in custody disputes. It was noted that nearly every center has had experience with receiving referrals from attorneys who want free assistance for their clients in getting protection orders. Two safeguards to maintaining the integrity of the process include a separate definition of domestic violence when custody is involved, which was accomplished in a 1997 change to NDCC Section 14-05-22, and a sanction for false allegations of domestic violence, which was accomplished in a 1999 change to Section 14-07.1-02.1.

Regarding the equality of the resources available to the petitioner and the respondent in the domestic violence protection order process, the testimony indicated that the intent of the legislation 30 years ago was to level the playing field by providing assistance to the most vulnerable--battered women and their children. It was noted that concerns about accusations of lopsided resources is puzzling given the fact that victim advocates have raised the resources themselves. It was noted that respondents are eligible for indigent defense if the respondent violates an order. It was emphasized domestic violence is a gender-based crime. As long as people resist seeing domestic violence as a gender-based crime, there will be gender-based issues.

Efforts to Improve the Domestic Violence Protection Order Process

Testimony regarding the domestic violence protection order process indicated that the language used in protection orders is not easily understood by respondents and seems to be more directed at law enforcement. According to the testimony, the petitioner is usually accompanied by an advocate; however, the respondents usually do not have an advocate or an attorney. The testimony noted that respondents often do not understand the proceeding, how to represent themselves, or how to respond to an order. It was suggested that it would be helpful if informational materials regarding the process were available to both the petitioner and the respondent. It was also suggested that the materials should be in plain English and in a format similar to those done for small claims court parties. The testimony also indicated that there should be more information made available to respondents regarding the possession of firearms if a domestic violence protection order is issued. It was suggested that it may be helpful if the State Bar Association of North Dakota would form a task force to develop informational materials for petitioners and respondents regarding the domestic violence protection order process.

Because of restrictions from funding sources, Legal Services of North Dakota is not able to represent respondents in domestic violence protection order cases. It was noted that because the volunteer lawyer program follows the same guidelines as Legal Services

of North Dakota, this program also does not represent respondents. Some cases are referred to the State Bar Association of North Dakota in which case the association may attempt to find an attorney who is willing to take the case.

The committee expressed concern regarding the inequality of resources available to petitioners versus respondents. The committee discussed whether it is the Legislative Assembly's responsibility to provide funding for legal services in civil cases. The committee noted that there is no constitutional requirement to provide legal services in civil cases. The committee also noted that if the protection orders issued by the court are unclear or difficult to understand, it is the responsibility of the court to clarify or simplify the language or to provide informational packets to petitioners and respondents.

Conclusion

The committee encourages the courts to include clearer information in domestic violence protection orders, recommends that the judicial branch and the State Bar Association of North Dakota evaluate the language used in domestic violence protection orders, and recommends that information regarding the respondent's rights and responsibilities should be included in those orders.

PATERNITY REGISTRY STUDY

Adoption Law

Generally, adoption is a creature of state law, and although all 50 states have different ways of dealing with the issue of adoption, the overall adoption scheme is similar in most states.

Although the National Conference of Commissioners on Uniform State Laws drafted uniform adoption Acts in 1953, 1969, and 1994, states have been hesitant to adopt these Acts. North Dakota, along with Alaska, Arkansas, and Ohio, has enacted the National Conference of Commissioners on Uniform State Laws' 1969 Revised Uniform Adoption Act. Vermont appears to be the only state that has adopted the 1994 version of the Uniform Adoption Act.

In addition to North Dakota's version of the Revised Uniform Adoption Act, state law addresses adoption in NDCC Chapter 50-12, regarding licensure by the Department of Human Services of child-placing agencies; Chapter 50-28, regarding the Department of Human Services' adoption assistance program for special needs children; Chapter 14-13, regarding Interstate Child Placement Compacts; Chapter 14-15.1, regarding the relinquishment of a child to adoptive parents; and Chapter 14-20, the Revised Uniform Parentage Act. The Revised Uniform Parentage Act, a 2002 revision of the Uniform Parentage Act, also has been enacted by Delaware, Oklahoma, Texas, Utah, Washington, and Wyoming.

North Dakota law does not provide for a paternity registry; however, NDCC Chapter 14-20, the Revised Uniform Parentage Act, establishes a procedure for a man to sign an acknowledgment of paternity or a denial of paternity. Section 14-20-17 establishes a procedure for the rescission of an acknowledgment or denial of paternity. With respect to the consent required for adoption, Section 14-15-05 provides that the consent of the father of the minor is required if the person is presumed to be the biological father of the minor as provided for under Section 14-20-10.

Paternity Registry Laws

When a mother wishes to place a child for adoption, the nature and extent of the father's legal rights in relation to the child vary from state to state. At common law, no legal relationship existed between the father and the child if the biological parents were not married. Gradually, both society and the law began to recognize the relationship between a man and his out-of-wedlock child. The question of whether a putative or presumed father has a legal interest in his child is of great practical importance for adoption. State laws require that everyone with a legal relationship to the child have his or her rights terminated before an adoption can proceed. Thus, courts must determine whether, under the relevant state statute, an unwed father has a legal interest in his child. If so, the court must afford the biological father the statutorily prescribed degree of due process protection before his legal relationship to the child may be terminated. The state's interest in placing children with adoptive parents quickly requires that the nature of the father's rights be determined promptly. States differ dramatically in the requirements they impose on an unwed father who wishes to preserve the father's legal interest in the child.

Many states have addressed this issue by creating "paternity" or "putative father" registries. Most paternity registry statutes provide that when a man registers with the appropriate state agency, the man will be notified of any petition to adopt the child. The general premise of a paternity registry is that by filing a form with the appropriate state agency, a putative father's parental rights will not be terminated without his knowledge.

As of 2005, 23 states (Alabama, Arizona, Arkansas, Delaware, Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Louisiana, Minnesota, Missouri, Montana, Nebraska, New Hampshire, New Mexico, New York, Ohio, Oklahoma, Tennessee, Texas, and Wyoming) have statutes authorizing the establishment of paternity registries. These statutes usually provide that the failure to register or file may preclude the right to notice of termination or adoption proceedings. States differ in the information they maintain in their registries, but the information may include the name, address, Social Security number, and date of birth of the putative father and birth mother; the name and address of any person adjudicated by a court to be the father; the child's name and date of birth or expected month and year of birth; and a registration date. A number of states make provisions in their statutes which allow putative fathers to revoke or rescind a notice of intent to claim paternity. Of these states, 12 allow revocation at any time, while revocation is effective only after the child's birth in Arkansas and Iowa. Florida allows revocation only at any time before the child's birth. Other states limit the right of rescission to 60 days after the paternity claim is

submitted or before a court proceeding to establish paternity, whichever occurs first.

Access to information maintained in registries also varies from state to state. Many jurisdictions permit certain persons access to registry records. In general, those persons with a direct interest in the case, such as birth mothers, courts, attorneys, licensed adoption agencies, prospective adoptive parents, state social service departments, state child support offices, and registries of other states, are entitled to access the information contained in the registries.

In a series of cases, the United States Supreme Court has addressed the issues relating to the parental right of unwed fathers. An overview of this case law appears to indicate the Court's desire to allow states to decide the manner and the extent to which the state addresses paternity rights.

Testimony and Committee Considerations

The committee, in its study of the feasibility and desirability of establishing a paternity registry in the state, received information and testimony from several entities, including The Village Family Service Center, the Department of Human Services, and from an adoptive father. The committee's considerations focused on the need for a paternity registry, a review of proposed 2003 North Dakota legislation regarding a paternity registry, and the efficacy of paternity registries in other states.

Need for a Paternity Registry

The committee received testimony from the Department of Human Services regarding the state's adoption process and the role a paternity registry plays in the adoption process. According to the testimony, when a birth mother is seeking to make an adoption plan for her child, the child-placing agency makes every effort to contact the putative father and involve him in the planning. When a birth father is unavailable or is not cooperative, the birth mother and agency may proceed with the adoption planning and a hearing to terminate parental rights. If the birth father is known, he is given notice of the hearing, either personally or by publication. If the birth father does not appear at the hearing, his rights may be terminated by default. It was noted that problems with this process occur when the birth mother is either not aware of or is not truthful with the agency as to the identity of the birth father. The effect of a paternity registry would be that notice of an action to terminate a man's parental rights would be provided to a registered father. According to the testimony, a paternity registry may protect the rights of a birth father who has an interest in a child he has fathered who may be placed for adoption without the father's knowledge. A paternity registry puts the burden on the birth father to establish his interest in a child he may have fathered. A paternity registry allows a birth mother to proceed with an adoption plan when the birth father is not cooperative in the planning process and is not willing to take parental responsibility. A paternity registry also may assist a birth parent or adoption counselor in locating an alleged father who has registered his interest in a child he may have fathered. A paternity registry does not relieve a birth mother of an obligation to identify a known father of her child or of the agency to contact a known birth father to obtain his cooperation and other information for the benefit of the child and the prospective adoptive family. It was noted that it is possible that more than one man may be registered as the putative father for the same child. In that situation, additional testing would be necessary to determine the birth father. The testimony indicated that strict confidentiality provisions in paternity registry laws have resulted in limited problems with the abuse of the information contained in the registries.

Testimony from an adoption services organization expressed support for the establishment of a paternity registry in North Dakota. According to the testimony, a paternity registry can protect a child's right to a smooth adoption. The testimony also noted that because each man who registers and asserts his rights in a timely manner regarding a particular woman is given notice of a pending adoption, a paternity registry does not squelch men's rights but rather gives men rights.

The committee also received testimony from an adoptive father who discussed the challenges and difficulties he and his wife experienced following the adoption of their son. According to the testimony, the problems this couple experienced could have been avoided if North Dakota law provided for a paternity registry. In this instance, the adoptive parents had an experience in which a man came forward when their adoptive son was six months old, claiming to be the father of the child. It was noted that the outcome of their experience was that the parental rights of the birth father eventually were terminated because the court found that the birth father could not properly parent the child; however, this outcome was achieved after more than a year of legal matters, added legal costs, and a great deal of emotional anguish. According to the testimony, a paternity registry would have prevented those problems. It was noted that a paternity registry is not about taking away rights from the birth father but rather it is about establishing timelines.

North Dakota adoption law provides for two proceedings--a hearing to terminate parental rights and a proceeding to finalize the adoption conducted six months later. According to the testimony, if the hearing to terminate parental rights were used also to terminate the rights of any potential father, it would solve some of the adoption issues.

Senate Bill No. 2035 (2003)

In 2003 the Legislative Assembly considered Senate Bill No. 2035, which would have established a paternity registry. Senate Bill No. 2035 failed to pass the Senate by a vote of 46 to 1. The bill was developed by an informal working group of child-placing agency staff and supervisors in consultation with the Department of Human Services. Under the bill, the paternity registry would have been facilitated through the Division of Vital Records of the State Department of Health. The bill allowed for a potential father to register at any time before the birth of the child and up to three days after the birth of the child. An agency facilitating the adoption of a child would have been required to request a search of

the registry before a hearing for the termination or relinquishment of parental rights. The search of the registry would have been required to be conducted no sooner than four business days after the birth of a child and the Division of Vital Records was required to issue a certificate of the results of the search within three business days of the receipt of the request. The bill would have provided a timeframe that would have been consistent with current timeframes for relinquishment hearings for infant adoptions in some court jurisdictions within the state. The bill provided that a mother would have 30 days from the receipt of notice of a paternity registry submission to deny the registrant's claim of paternity.

The committee also reviewed the bill's accompanying fiscal note, which indicated a fiscal effect of $1,000. According to testimony in explanation of the fiscal note, it was determined that the costs involved would be mainly for publication materials.

The committee also reviewed 2006 federal legislation that would have provided for a national paternity registry. The bill, S.3803 (109th Congress), which was introduced by Senator Mary Landrieu of Louisiana, never became law.

Committee members expressed concerns that for a paternity registry to be effective and to provide rights to a putative father there would have to be widespread publication and education efforts that promote the existence and purpose of a paternity registry. Concerns were also expressed that a paternity registry would need to be fully funded, including the funding necessary to promote the registry.

Efficacy of Paternity Registry Laws of Other States

The committee reviewed information regarding the paternity registry laws of other states. The information included each state's time limit for registering, the consequence of failure to register, whether a paternity action is required, and whether the state law includes an impossibility exception.

In addition to reviewing information regarding the specifics of each state's paternity registry laws, the committee received information about the efficacy of paternity registries of several Midwestern states. The information was based upon an informal survey conducted by the adoption administrator of the Department of Human Services. The individuals surveyed were the adoption administrator's counterparts in the other states. According to the testimony, the counterpart in Montana indicated that the Montana registry was "better than not having one," but felt it was not publicized adequately and wondered whether young men were aware of this option to protect their rights to a child. The counterpart in Wisconsin noted that Wisconsin has not had any particular issues with its registry and that it is an effective tool. According to the testimony, both Montana and Wisconsin believe that their adoption agencies continue to make efforts to search for birth fathers to involve them in adoption planning and to gather their information when possible. The Iowa counterpart noted that the registry is an effective tool for public agencies in making diligent efforts to identify fathers of children in foster care. The Minnesota counterpart's response was that, although its public agency has not used the registry regularly, the state is looking at changes that would make the registry more accessible to the public agency. It was noted that Minnesota indicated that private agencies in the state are unhappy with the length of time after birth that a father has to register (30 days) and have tried several times to have that time shortened. South Dakota and Colorado do not have paternity registries. There have been unsuccessful attempts in both states to pass such legislation.

Conclusion

It was the consensus of the committee that in light of the testimony received during this study and the Legislative Assembly's relatively recent consideration of a bill to establish a paternity registry, it did not appear that there is sufficient interest in or support for the establishment of a paternity registry. The committee makes no recommendation regarding the establishment of a paternity registry.

COMPREHENSIVE STATUS AND TRENDS REPORT

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 as required by NDCC Section 19-03.1-44. According to the report, the Youth Risk Behavior Survey conducted by the Superintendent of Public Instruction indicates that North Dakota's responses in alcohol usage and binge drinking categories are among the highest in the nation. While the survey results reflect continued reduction in youth smoking, a well-known precursor to other substance abuse, responses regarding drug usage remained similar to those in the past. There was a slight decrease between 2005 and 2007 in the number of students who were offered, sold, or given an illegal drug on school property by someone during the last 12 months.

The report indicated that state and federal restrictions on the sale of ephedrine-based cold medicine, combined with law enforcement education and enforcement efforts, have contributed to reducing clandestine methamphetamine lab busts from 293 in 2003 to 25 in 2007. Law enforcement efforts now are focusing on drug trafficking, including methamphetamine transported through our state from Canada and Mexico. The report indicated that law enforcement will continue to focus on ways to target drug trafficking in the state. The efforts in this area continue to be hampered, however, by significant reductions in federal aid to the state. In May 2008 the Governor's Prevention Advisory Council on Drugs and Alcohol announced a grant program to fund projects that discourage alcohol and drug abuse by minors. According to the report, the council will favor programs that target elementary school-age youth and their parents. One of the emerging trends raising concerns in the state is prescription drug abuse by minors. The number of minors who are accessing and abusing prescription drugs is increasing.

A pilot project being conducted in the state to test driving under the influence offenders for alcohol use has been very successful. The project, known as the 24/7 sobriety pilot program, requires driving under the influence offenders to be tested for alcohol use twice per day. If the offender fails a test, the offender is sent immediately to jail. As of the date of the report, over 90 offenders had participated in the program. It was reported that fewer than 5 percent of the participants had failed a test. According to the report, this program is different because, instead of keeping intoxicated people from driving, this program keeps them from drinking. The state has been loaned 10 ankle bracelets that can be used for those offenders in rural areas who are unable to get to a location for testing. The bracelets randomly test the offender for alcohol use twice per day. The test results are reported by telephone to a central computer in Denver. If the offender tests positive for alcohol use, notification is sent to law enforcement.

COMMISSION ON LEGAL COUNSEL FOR INDIGENTS ANNUAL REPORT

The committee received a report from the director of the Commission on Legal Counsel for Indigents, as required by NDCC Section 54-61-03, regarding pertinent data on the operation, needs, and cost of the indigent defense contract system and any established public defender offices. The commission has been in existence for about two years. Public defender offices are operational in Williston, Dickinson, Grand Forks, and Minot. The Minot office is handling about 280 cases per calendar year. The cases assigned to the public defender offices are a mixture of felonies, misdemeanors, and juvenile cases. Individuals with income of less than 125 percent of the federal poverty level can qualify for indigent defense services. The commission hires conflict counsel to handle those cases in which the public defender may have a conflict of interest. Public defender offices will be operational in Bismarck and Fargo by the end of 2008. About two-thirds of indigent defense cases in the state are being handled by contract attorneys and about one-third by public defender offices. According to the report, one of the most challenging issues has been finding attorneys to do indigent defense work, especially in the western part of the state. The report noted that many of the complaints received about the indigent defense program are about the lack of contact with the person's attorney. According to the report, the commission has implemented a system for having attorneys respond to complaints. It was noted that as a result of this new system the number of complaints has decreased.

JUDICIARY COMMITTEE

The Judiciary Committee was assigned five studies. Senate Concurrent Resolution No. 4011 (2007) directed the Legislative Council to study the formation of a North Dakota gaming commission to regulate and control all forms of gaming in North Dakota. Section 2 of Senate Bill No. 2217 (2007) directed the Legislative Council to conduct a study of abstracters, title opinions, and title insurance, including a review of the orderly and efficient transfer of real property which provides adequate assurances of title. Section 2 of House Bill No. 1219 (2007) directed a study of the feasibility and desirability of establishing a statewide automated victim information and notification system to provide information and notify registered victims regarding the status of an offender. House Concurrent Resolution No. 3048 (2007) directed a study of crime victim compensation funding, including a review of other states' efforts, and the receipt of input from victim advocacy groups and medical providers. Section 9 of Senate Bill No. 2008 (2007) directed a study of the practices and laws relating to the sale of real estate by auctioneers, including a review of the sale of multiple parcels of property at a single sale.

The Legislative Council delegated to the committee the responsibility to review uniform laws recommended to the Legislative Council by the North Dakota Commission on Uniform State Laws under North Dakota Century Code (NDCC) Section 54-35-02. The Legislative Council also delegated to the committee the responsibility under Section 53-06.2-04 to receive a biennial report from the Racing Commission regarding the operation of the commission and under Section 53-12.1-03 to receive a report from the director of the North Dakota Lottery regarding the operation of the lottery. The Legislative Council delegated to the committee the responsibility for statutory and constitutional revision. By Legislative Council chairman request, the committee reviewed the state and federal laws and regulations relating to the possession of a firearm by certain offenders.

Committee members were Representatives Lawrence R. Klemin (Chairman), Randy Boehning, Stacey Dahl, Lois Delmore, Brenda Heller, Joyce Kingsbury, Kim Koppelman, William E. Kretschmar, Jasper Schneider, and Lisa Wolf and Senators Tom Fiebiger, Stanley W. Lyson, Carolyn Nelson, Dave Nething, Dave Oehlke, and Curtis Olafson.

The committee submitted this report to the Legislative Council at the biennial meeting of the Council in November 2008. The Council accepted the report for submission to the 61st Legislative Assembly.

FORMATION OF A STATE GAMING COMMISSION STUDY

Senate Concurrent Resolution No. 4011 directed a study of the formation of a North Dakota gaming commission to regulate and control all forms of gaming in North Dakota. The legislative history regarding this resolution indicated that as a way to deal with all the various types of gaming authorized by the state, a single gaming commission may provide for consistency and accountability.

Background

Under NDCC Chapters 53-06.1 (Games of Chance) and 53-06.2 (Pari-mutuel Horse Racing), certain charitable organizations are permitted to conduct a limited array of games of chance and horse racing events. North Dakota Century Code Chapter 53-12.1 provides for the participation of North Dakota in a multistate lottery.

The State's Gaming Commissions

State Gaming Commission

Since the 1977 law that authorized charitable gaming in the state, the responsibility for enforcement of the charitable gaming law has been shared by the Attorney General and local officials. In 1991 a State Gaming Commission was created consisting of a chairman and four other members appointed by the Governor with the consent of the Senate. The legislation gave the State Gaming Commission an increased role in charitable gaming enforcement. Enforcement attention has been directed at preventing crimes and at ensuring compliance with the many requirements of the law. The State Gaming Commission has adopted extensive rules governing accounting procedures and auditing methods to increase opportunities to prevent and detect cheating by players or gaming personnel.

Under the 1991 legislation, the State Gaming Commission would share authority with the Attorney General to impose fines on organizations, distributors, and manufacturers that violate any law or rule and to suspend or revoke a charitable gaming distributor's or manufacturer's license for violation of any law or rule. In 1993, however, the sole authority to impose fines and to suspend or revoke licenses was returned to the Attorney General. The commission is given full authority for adoption of rules to implement the charitable gaming laws.

Since 1985 the Gaming Advisory Board has provided guidance and assistance to the Attorney General and since 1991 to the State Gaming Commission on regulatory policy issues, the revision of the gaming rules, and on recommended law changes. The Gaming Advisory Board meets about three times a year as needed. Members serve on a voluntary basis and are not reimbursed for expenses.

Racing Commission

In 1987 the Legislative Assembly established the Racing Commission and authorized pari-mutuel horse racing. Initially, the Racing Commission was established in the office of the Secretary of State. Members of the commission originally were the Secretary of State and four other members appointed by the Governor. In 1989 the Legislative Assembly moved the Racing Commission from the Secretary of State’s office to the Attorney General's office. The Secretary of State was removed as chairman of the commission and one other appointee

of the Governor was added. The 1989 legislation also established the breeders' fund and purse fund and authorized offtrack wagering on races to be held at licensed racecourses either in state or out of state.

In 1991 the Legislative Assembly enacted legislation that provided that of the Governor's five appointees one must be nominated by the state chapter or affiliate of the American Quarter Horse Racing Association, one by the state chapter or affiliate of the United States Trotting Association, one nominated by the state chapter or affiliate of the International Arabian Horse Association, and one nominated by the state chapter or affiliate of the North Dakota Thoroughbred Association. The Legislative Assembly also approved simulcast dog racing in the state.

In 1991 the Legislative Assembly created the promotion fund and provided that unclaimed tickets and breakage from each live race and simulcast program be deposited in the promotion fund. This legislation also provided that the money in the breeders' fund, purse fund, and promotion fund may be spent by the commission pursuant to a continuing appropriation.

In 2001 the Legislative Assembly authorized pari-mutuel wagering to be conducted through account wagering and that an account wager may be made on an account only through a licensed simulcast services provider authorized to operate the simulcast pari-mutuel wagering system under the certificate system.

In 2005 the Legislative Assembly enacted two bills relating to the Racing Commission. The first provided that a member of the Racing Commission who is appointed to fill a vacancy arising from other than the natural expiration of a term who serves the unexpired portion of the term may be reappointed. The second removed the Racing Commission from the Attorney General's office. The bill authorized the Attorney General to request payment for any services the Attorney General renders to the Racing Commission.

Lottery Advisory Commission

The North Dakota Lottery and the Lottery Advisory Commission were established in 2003. The Lottery Advisory Commission is composed of five members, three of whom are legislators selected by the chairman of the Legislative Council and two of whom are selected by the Attorney General. The commission is required to meet at least once a quarter and any additional meetings as the chairman of the commission determines necessary. The commission advises the lottery director and the Attorney General on policy and general operation of the lottery. The commission also serves as the audit committee.

The Attorney General and director of the North Dakota Lottery consult with the Lottery Advisory Commission on substantive policies, plans, issues, contracts, timelines, and activities of the lottery, including selecting retailers; proposing new games; hiring a lottery director; proposing laws and rules; drafting legislative reports; proposing surveys or studies; proposing advertising, marketing, promotional, and educational campaigns; and proposing policies on monetary fines and license suspensions and revocations.

Summary of Neighboring States' Gaming Commission Structure

South Dakota

The South Dakota Lottery Commission is a seven-member board appointed by the Governor which establishes policy for and advises the lottery director on the operation of the South Dakota Lottery. Any major procurement of the lottery requires the approval of the commission. Members are appointed by the Governor and confirmed by the Senate. Each commissioner's term is three years.

Other gaming in South Dakota, which includes the slot machines and table games conducted at Deadwood and the state's pari-mutuel racing, is regulated by the South Dakota Gaming Commission. The South Dakota Gaming Commission consists of five members appointed by the Governor. Each commissioner's term is three years. Members may not serve more than two consecutive full terms.

Minnesota

The Minnesota Gambling Control Board adopts rules for the conduct of charitable gambling, approves all gambling equipment for use, issues licenses, provides training and education to organizations, conducts compliance reviews and site inspections, and imposes penalties for violations. The board has delegated to its director the power to issue or deny licenses and permits under board guidelines. The board receives the financial reports of licensed organizations and verifies gross receipts, prize payouts, expenses, and expenditures of net profits for lawful purposes. The board may investigate alleged violations of law or rule, issue consent orders, and impose civil penalties.

The Minnesota Racing Commission regulates horse racing and card playing in Minnesota.

The Minnesota State Lottery is operated under the control of a director appointed by the Governor with the advice and consent of the Senate. The Minnesota State Lottery does not have a regulatory commission or board. In 2004 the Minnesota Legislature created the Lottery Organizational Task Force to study the organization and profitability of the state lottery. The January 10, 2005, final report of the task force recommended the establishment of a board to oversee the activities of the Minnesota State Lottery. A bill to establish a state lottery board was introduced but failed to pass during the 2005 legislative session.

Montana

The Gambling Control Division of the Montana Department of Justice regulates all forms of gambling in Montana other than the Montana Lottery and horse racing. The Gaming Advisory Council, created in 1989, advises the Department of Justice and other state agencies on public policy matters related to gaming, including amendments to the gambling statutes, additional or modified departmental rules, clarification of existing rules, and operation of the Gambling Control Division.

The Montana Lottery Commission, which is a five-member board appointed by the Governor, sets policies

for the operation of the Montana Lottery. The members are appointed to a four-year term.

The Board of Horse Racing, which is a division of the Montana Department of Livestock, is responsible for regulating the live and simulcast horse racing industry and ensuring compliance by the approximately 3,500 licensees with state laws and board rules.

Testimony and Committee Considerations

The committee received testimony and information from the Gaming Division of the Attorney General's office, members of the State Gaming Commission and the Gaming Advisory Board, the executive director and members of the Racing Commission, the executive director of the North Dakota Lottery, charitable organizations, and various horse racing entities. The committee's deliberations centered on three issues--state gaming regulatory differences, the role and need for the State Gaming Commission, and Racing Commission concerns.

State Gaming Regulatory Differences

During the course of the committee's study on the formation of a single gaming commission to regulate all forms of gaming in the state, the committee received testimony from representatives of each gaming industry regarding the regulatory differences among the different forms of gaming. According to the testimony, the four gaming industries--lottery, charitable, horse racing, and tribal casino--are fundamentally different in almost all aspects.

According to testimony from the lottery industry, there are few similarities between the lottery and the other three industries. It was noted that a single gaming commission that regulates all types of gaming would struggle, at best, to attempt to thoroughly understand the intricacies of each unique industry; apply due diligence in decisionmaking; achieve responsive results; or fairly, efficiently, and competently regulate four gaming industries. According to the testimony, the Lottery Advisory Commission, which serves as policy advisor to the Attorney General and director of the lottery, is directly involved in all substantive policies, plans, issues, contracts, timelines, and activities of the lottery; has been instrumental in the lottery's accomplishments and financial success; and understands the opportunities and challenges facing the lottery. It was noted that the Legislative Assembly in 2003 entrusted the Attorney General with the responsibility to develop, implement, and administer the lottery. According to the testimony, for the lottery to be successful, the lottery must prosper, have a favorable public image, and players must be confident that games are fair and honest. It was also noted that because of the guidance of the Lottery Advisory Commission, the lottery is prosperous, enjoys a favorable public image, and its games are trusted as being fair and honest. The lottery provides the executive and legislative branches of our government a full accounting of the lottery's financial activity and operation. The lottery has not been the cause of any public or legislative alarm. It was emphasized that if there is a particular gaming-related issue that the committee is attempting to address, that it should be addressed apart from the North Dakota Lottery.

Testimony regarding the State Gaming Commission and the charitable gaming industry indicated that although the commission's only statutory duty is to adopt gaming rules, the Attorney General takes direction from the state Gaming Commission regarding various gaming issues that may arise. It was noted that consistency and accountability have not been a problem in the charitable gaming industry in the state and that horse racing, charitable gaming, and the lottery are very different and distinct areas of gaming. The testimony further indicated that the current structure of a gaming commission that adopts rules and a volunteer gaming advisory board works very well for the charitable gaming industry. Representatives of the volunteer Gaming Advisory Board indicated that the current structure is very efficient and it gives the charities a voice in the gaming industry. According to the testimony, because of the uniqueness of each type of gaming and because the commission members of each type of gaming in the state serve in a part-time capacity, it would be difficult for the members of a single gaming commission to have the expertise necessary to regulate charitable gaming, the lottery, and horse racing.

The committee also received testimony from the horse racing industry regarding the regulatory differences among the different forms of gaming in the state. It was noted that because of the vast differences in the operation, rules, regulations, and intricacies of each type of gaming, it would be very difficult for the members of a single commission to become experts and be able to adequately regulate all types of gaming. According to the testimony, horse racing is unlike any other type of gaming and, consequently, there is no interaction in this state between racing and the other types of gaming. It was further noted that the racing industry is unlike any other form of gaming in the state because the racing industry involves pari-mutuel wagering, whereas charitable gaming and the lottery do not. Pari-mutuel wagering is regulated under its own set of rules that are interconnected throughout the country. Finally, it was noted that even within a single type of gaming it may take a commission member years to develop the expertise to understand the intricacies of that particular type of gaming. According to the testimony, allowing Racing Commission members to serve consecutive terms would allow for more expertise on the commission.

A representative of the tribal casino industry also emphasized the uniqueness of each type of gaming in the state. The testimony indicated that the tribal casinos have a good relationship with the Attorney General's office. It was noted that casino gaming is a very complicated and unique industry with a lot of money involved and that the tribes strive to be compliant with the requirements set forth in the gaming compacts. According to the testimony, the Attorney General's office has been extremely professional and consistent in its understanding of tribal gaming and that there are few areas that need to be improved with respect to the tribes' relationship with the Attorney General's office.

Role and Need for the State Gaming Commission

The committee received testimony regarding the role of the State Gaming Commission and whether, in light of the limited duties of the commission, the commission was necessary. The only statutory duty of the State Gaming Commission is to adopt administrative rules for charitable gaming in the state. It was noted that there was a point in the history of charitable gaming when there was a disagreement between the gaming industry and the Attorney General. This disagreement led to the formation of the State Gaming Commission. It was noted that the gaming industry now has a very good working relationship with the Attorney General and that the State Gaming Commission may not be needed as much as it was at the time of its formation. The State Gaming Commission is a part-time commission without any paid staff. According to the testimony, the commission, which has a biennial budget of approximately $6,100, directs the staff of the Gaming Division of the Attorney General's office to draft rules and conduct public hearings. It was noted that current practice could result in disagreement between the Gaming Division and the State Gaming Commission on the rules that should be adopted.

The committee considered a bill draft that would give the Attorney General the authority to adopt rules to administer and regulate the charitable gaming industry. The bill draft would create a gaming advisory commission composed of five members appointed by the Attorney General. Under the bill draft, the duties of the gaming advisory commission would be to advise the Attorney General on policy and general operation of charitable gaming. The bill draft would repeal NDCC Section 53-06.1-01.1, which provides for the State Gaming Commission.

Testimony from the Attorney General's office regarding the bill draft indicated that the Attorney General’s office does not have any objections to the bill draft that establishes a gaming advisory commission; however, it was recommended that the size of the commission be increased from five members to seven members. It was also recommended that the number of mandatory meetings of the gaming advisory commission be reduced to two meetings per year. The testimony indicated that the current State Gaming Commission operates well but the Attorney General’s office will not oppose the change if the Legislative Assembly wants to change the State Gaming Commission to an advisory commission. The committee revised the bill draft to reflect the recommended changes.

Testimony in opposition to the bill draft indicated that members of the State Gaming Commission believe that the commission serves an important function and should not be eliminated. According to the testimony, the State Gaming Commission has streamlined the gaming process and has worked hard to refine the administrative rules for charitable gaming. It was noted that if the State Gaming Commission were eliminated, the benefit that the State Gaming Commission provides to the Legislative Assembly and the Attorney General would be lost. The testimony indicated that the proposed advisory commission would only be a sounding board and would not have any real authority. It was also noted that the State Gaming Commission provides the gaming industry with representation.

Other testimony in opposition to the bill draft noted that the bill draft concentrates all the power for charitable gaming rulemaking and enforcement with the Attorney General which consequently diminishes the power of the Legislative Assembly and the Governor. According to the testimony, the State Gaming Commission's rulemaking authority has a check and balance procedure in place because all rules must be approved by the Legislative Council's Administrative Rules Committee. It was noted that State Gaming Commission structure is very efficient and operates on a very limited budget. Members of the charitable gaming industry in opposition to the bill draft testified that the gaming industry is satisfied with the current structure. It was noted that charities are concerned that they may lose their voice in the gaming industry if the changes proposed by the bill draft are made.

Concerns were expressed that there does not appear to be a valid reason for eliminating the State Gaming Commission and replacing it with an advisory commission. The committee concluded that the bill draft regarding the creation of a gaming advisory commission and the elimination of the State Gaming Commission should not be recommended to the Legislative Council.

Racing Commission Concerns

During the course of the committee's discussion of the formation of a North Dakota gaming commission to regulate and control all forms of gaming in North Dakota, the committee received testimony that expressed concerns about the authority and activities of the Racing Commission as well as the lack of oversight of the commission. Committee members also noted that there are concerns and frustrations from the horse industry about the composition of the Racing Commission.

The committee received testimony from the director of the Racing Commission regarding the activities of the Racing Commission. The testimony indicated that the Racing Commission, which is the regulatory body in charge of regulating live and simulcast racing in the state, has tried to accommodate the requests of the racing and horsemen's associations while at the same time hold funds in reserve. According to the testimony, given the resources available, the commission has attempted to keep racing in the state alive and well.

The committee also received testimony from representatives of the two charitable organizations that benefit from the proceeds of horse racing. According to the testimony, there are concerns about the distribution of the racing proceeds to charitable organizations. The testimony indicated that the charitable organizations have struggled to understand the terms, percentages, and procedures in horse racing and wagering. It was noted, however, that because it is difficult for those not involved in the horse racing industry to master a thorough understanding of this system, some charitable organizations may have been too willing to accept the assurances and explanations from the providers. According to the testimony, in spite of assurances from

the Racing Commission that 2007 legislative changes would not adversely affect net revenues, that is what happened. It was noted that changes in the racing industry threaten the organization's ability to provide services to those who need them. The testimony indicated that the charitable organizations cannot continue to operate and lose money.

Testimony from representatives of the horse racing industry indicated that in the national landscape of racing legislation, North Dakota and Oregon stand out as possessing the most advantageous tax structure for advanced deposit wagering. It was noted, however, that although North Dakota possesses some of the most nationally competitive gaming legislation available today, it does not, from outside appearances, possess an internal structure that is attractive to would-be advanced deposit wagering companies. According to the testimony, Oregon's Racing Commission has been strongly supported by both its state legislators and horsemen and, as a result, has become home to many of today's top advanced deposit wagering companies. It was noted that when faced with continual North Dakota headlines wherein the very existence of the state's Racing Commission is in question, it makes attracting new business to the state a very difficult proposition. It was also noted that a stable and progressive-minded regulatory infrastructure is crucial in enticing new or existing advanced deposit wagering companies to reside in the state. The testimony indicated that stability in leadership, direction, and legislative expectations are key to the continued growth of the horse racing industry in the state. According to the testimony, continuity of leadership, focus of direction, and serving the best interests of the majority should be the focus of the Racing Commission. It was noted that the industry is not opposed to oversight of the Racing Commission by the Attorney General, but a central body with a director is important.

During the course of the discussions regarding the Racing Commission, several committee members expressed concern that the Racing Commission does not work well as a stand-alone agency. The committee members also expressed the need for accountability to another governmental entity. In response to the concerns regarding the Racing Commission, the committee considered a bill draft that would give the Attorney General supervisory authority over the Racing Commission. Testimony in explanation of the bill draft indicated that the bill draft would restore the Attorney General's authority over the Racing Commission as it existed before the changes made by the Legislative Assembly in 2005.

Testimony regarding the bill draft from a representative of the Attorney General's office indicated that there is some concern about having oversight without the ability to appoint the members of the Racing Commission.

Testimony from representatives of the horse industry indicated that because of the dissention between the horsemen and the racing industry, there is a need for some changes, but the problems are not insurmountable. While the testimony did not oppose the bill draft, the continued need for a central body and a director for those involved in the horse racing industry to take their concerns was emphasized.

Recommendation

The committee recommends Senate Bill No. 2043 relating to the oversight of the Racing Commission. The bill would provide that the Racing Commission is subject to the supervision and direction of the Attorney General.

ABSTRACTERS, TITLE OPINIONS, AND TITLE INSURANCE STUDY

Section 2 of Senate Bill No. 2217 directed a study of abstracters, title opinions, and title insurance, which included a review of the orderly and efficient transfer of real property which provides adequate assurances of title.

Background

A person who is transferred title to an interest in real property located in the United States may acquire or receive a variety of types of assurances of the quality of that title. Among the assurances of title that are available to a person who acquires an interest in real property located in North Dakota are abstracts of title, attorney or title opinions, and title insurance. Under NDCC Section 26.1-20-05, title insurance may not be issued unless the title evidence is received from an abstracter and an attorney examines the title evidence.

Abstracts of Title

An abstract of title is a complete historical record of a certain parcel of real property which contains all transactions associated with that property. An abstract of title is organized in chronological order and notes all grants, conveyances, easements, estate proceedings, mortgages, tax liens, judgments, and encumbrances that affect that particular parcel. An abstracter searches the records and compiles an abstract of title. This information is held at the county level in the county recorder's office. To properly compile an abstract of title, an abstracter must perform a proper search of the public real estate records as they pertain to the real property that is described in the abstract and the abstracter must prepare appropriate summaries of every transfer or other transaction affecting the property in question during the span of time to which the requested abstract pertains. An abstract of title includes a certificate by the abstracter that refers to the periods of time covered by the abstract of title and the records that are the subject matter of the abstract.

In North Dakota abstracters are regulated by NDCC Chapter 43-01. This chapter provides for a state abstracters' board of examiners. The board consists of three members who are appointed by the Governor to six-year terms. Section 43-01-09 provides that before a person may engage in the business of making and compiling abstracts of title, the person must obtain a certificate of authority issued by the board and must file a bond or abstracter's liability policy as required by the chapter. Section 43-01-15 provides for the authority and duty of an abstracter.

The fees that may be charged for making and certifying an abstract are contained in NDCC Section 43-01-18. Section 43-01-23, which was enacted in 2005, provides that the board, through the issuance of a temporary certificate of authority and a certificate of registration, may authorize an individual or organization that is authorized to operate in another county to operate in a county that does not have an abstracter. This section provides that the board may not charge an abstracter for the temporary certificate of authority.

Title Opinions

Once the abstracter completes the abstract of title, it is forwarded on to an attorney who renders a title opinion on the marketability of the title to the property, including who the fee owner is as well as naming any other parties with a legal right to or interest in the property. Before issuing a title opinion, the attorney reviews and analyzes the contents of the abstract of title to determine and render an opinion on whether the liens of mortgages reported in the abstract have or have not been released, whether the enforcement of a particular lien is or is not barred by the applicable statute of limitations, whether an express easement has or has not been terminated, or other matters that may have a bearing regarding the current state of the title to the property. Each time the property changes hands, the abstract is updated and a new opinion is rendered.

North Dakota Century Code Section 26.1-20-05, which provides for the title evidence required before title insurance may be issued, provides that the evidence of title must be examined by a person admitted to the practice of law as provided by Chapter 27-11. The evidence of title has been interpreted by those in the industry to mean an abstract of title.

Title Insurance

Title insurance is insurance against loss from defects in title to real property and from the invalidity or unenforceability of mortgage liens. Title insurance is available in many countries but it is principally a product developed and sold in the United States. Title insurance is meant to protect an owner's or lender's financial interest in real property against loss due to title defects, liens, or other matters. The coverage provided by title insurance can be used to defend against a lawsuit attacking the title as it is insured, or reimburse the insured for the actual monetary loss incurred, up to the dollar amount of insurance provided by the policy. Generally, title insurance is required by mortgage lenders for virtually all real estate transactions, including many long-term leases. This form of insurance is usually issued to the purchaser of the property or the lender.

Title insurance in North Dakota is regulated by NDCC Chapter 26.1-20. Section 26.1-20-01 provides that every corporation organized for the purpose of insuring titles to real property in North Dakota is subject to the chapter and the rules adopted by the Insurance Commissioner. As previously mentioned, Section 26.1-20-05 provides that a title insurance company may not issue a title insurance policy unless the title evidence is received from the abstracter and an attorney licensed in this state has examined the title evidence.

2007 Legislation

Section 1 of Senate Bill No. 2217 increased the amounts of the fees an abstracter may charge for making and certifying an abstract. Testimony in support of the fee increases indicated that with advances in technology, clients expect results faster and better than ever before. The testimony noted that the cost of living as well as the cost of operating a business have increased substantially since the last increase in 2001, thus creating a need for the abstracter fees to keep pace with those increases. It was noted that due to technical advances made in some county offices, searches are more complex and time consuming than five years ago.

Testimony in opposition to the abstracter fee increases suggested that to increase the fee per entry by 67 percent and the fee per certification by 33 percent was irresponsible. According to the testimony, consumers should have a choice between abstracting and title insurance. It was noted that allowing fees to increase without asking the industry to modernize only perpetuates the present system.

Senate Bill No. 2119 (2007) updated the requirements for abstracters, including that an abstracter must have and maintain a complete tract index and all instruments of record in the office of the recorder in and for the county in which the abstracter is engaged in business.

Senate Bill No. 2218 (2007), which failed to pass the Senate, would have required a title insurance company to secure a certified abstract of title that has been examined by an attorney and which is current to the present transaction. Testimony in support of this bill indicated that the changes would clarify the original intent of NDCC Section 26.1-20-05. Testimony in opposition to the bill indicated that the bill takes a step backward by requiring an updated abstract before title insurance can be purchased.

Testimony and Committee Considerations

The committee received extensive testimony from those involved in the real estate industry, including the State Bar Association of North Dakota, the North Dakota Land Title Association, Farm Credit Services, the Abstracters' Board of Examiners, the Insurance Department, and the North Dakota Association of Realtors. The committee's consideration centered on five issues--the evidence of title and title opinion requirement for title insurance, the statutory requirements of abstracters and abstract companies, the North Dakota Recorders Information Network, the licensure of title insurance agents, and the regulation of out-of-state lenders.

Evidence of Title and Title Opinion Requirement for Title Insurance

The primary focus of the committee's study was NDCC Section 26.1-20-05, which is referred to as North Dakota's "plant law," the law that provides that the evidence of title must be examined by an attorney before

title insurance may be issued. The concerns generated by Section 26.1-20-05 centered on two issues--whether the term "evidence of title" was ambiguous and needs clarification and whether the requirement that the evidence of title must be examined by an attorney before title insurance can be issued is a practice that is outdated, is costly to consumers, and should be repealed or modified.

The committee received extensive testimony regarding these issues. Regarding the first issue, the testimony indicated that changes should be made to NDCC Section 26.1-20-05 to clarify that a certified abstract is required before title insurance may be issued. According to the testimony, some title insurance issuers do not believe that the evidence of title must be an abstract, but rather can be any evidence of title. It was recommended that the section should be clarified to require a certified abstract to the current date. The testimony suggested that the term "evidence of title" be changed to "a certified abstract of title continued to the date on the commitment to insure." It was argued that there would not be a question of interpretation if this change were made.

Regarding the issue of whether the requirement that the evidence of title must be examined by an attorney before title insurance can be issued is necessary, the committee received testimony that this requirement provides North Dakotans title assurance that is of the best quality at the lowest cost and in the most efficient manner. According to the testimony, about 20 years ago title insurance was not used in North Dakota. Only abstracts and title opinions were used. A change in lending policies regarding the sale of loans on the secondary market resulted in the increased use of title insurance. The out-of-state companies that are buying the loan want title insurance, not just an opinion of a local law firm. It was noted that title insurance is issued in about 98 percent of all real estate transactions in eastern North Dakota. According to the testimony, Minnesota, which does not require an abstract or a title opinion before the issuance of title insurance, has higher title insurance rates than North Dakota. The testimony indicated that the methods used in Minnesota to conduct searches are inconsistent and have resulted in increased title insurance claims. It was noted that examining a title is an acquired skill that should be done by an attorney. It was argued that the method used in North Dakota works well and is cost-effective. According to the testimony, most of the opposition to the process used in North Dakota comes from the out-of-state lenders.

According to the testimony, title insurance rates are based upon risk. It was noted that risk in North Dakota is low due in large part to the requirement of abstracts and title opinions. The testimony indicated that North Dakota has one of the lowest title insurance rates and claims rates in the country. According to the testimony, out-of-state title insurance companies will write title insurance on any title evidence; however, there is a difference between a marketable title, one which is free of defects, and an insurable title, one which the insurance company will insure in spite of defects. It was emphasized that inferior work done now causes problems later. The result of eliminating the process used in North Dakota will be the erosion of the quality of title over time. It was noted that the result will be that title insurance companies will raise rates or get out of the title insurance business in the state. Testimony from an attorney who practices in North Dakota and Minnesota argued that the number of problems with the Minnesota transactions versus the North Dakota transactions is about 20 to 1.

The committee also received testimony in support of eliminating the requirement of an evidence of title and a title opinion before title insurance can be issued. According to the testimony, North Dakota is the only state that has the abstract and title opinion requirement for title insurance. It was argued that this state's process results in a duplication of costs. The testimony noted that consumers do not have a choice between abstracting and title insurance.

According to the testimony, for North Dakota to move forward, modernization must take place. It was noted that there are two abstract offices in the state without fax machines. The testimony indicated that not every abstract office has competition and not all abstract offices have an attorney. According to the testimony, the requirement of an updated abstract and a title opinion before the issuance of title insurance is a double cost to consumers. It also was noted that consumer expectations have changed and a timely turnaround on real estate transactions is expected. The lack of competition in most counties and the delays caused by the statutory requirements have resulted in frustration on the part of lenders and consumers. The testimony indicated that a 2004 study of title insurance rates indicated that the rates were about $.76 per acre in South Dakota and Montana and about $1.08 per acre in North Dakota. According to the testimony, although North Dakota may have the lowest rates in the country for title insurance, when the additional cost of the abstract and the title opinion are included, the total cost to the consumer is no longer the lowest in the country. It was noted that the total costs in Montana and South Dakota are substantially lower than in North Dakota.

The committee reviewed the title evidence requirements, title insurance costs, and closing costs in South Dakota, Minnesota, Montana, Wisconsin, and Nebraska.

Statutory Requirements of Abstracters and Abstract Companies

The committee received testimony from the Abstracters' Board of Examiners regarding the statutory requirements of abstracters. The Abstracters' Board of Examiners receives its authority from NDCC Chapter 43-01. The board issues and oversees two types of certificates. The first--the certificate of registration--is awarded to an individual. The second--the certificate of authority--is granted to an abstract plant after meeting certain statutory criteria. To receive a certificate of registration, the individual must pass an examination that is written and administered by the board. Upon passage of the examination, the individual must pay a certificate

fee and must complete 18 hours of continuing education credits every three years to maintain the certificate. An individual issued a certificate of registration does not have the authority to issue abstracts of title. Abstracts of title may only be issued by entities holding a certificate of authority, also known as the "plant license." To receive a certificate of authority, certain requirements must be met, including having and maintaining in the abstracter business a complete tract index and a copy of all instruments of record from the recorder's office in the county in which the entity is engaged in business, filing a bond or abstracter's liability policy, having in charge an individual who holds a certificate of registration, and paying the certificate and examination fee. The board has the authority to deny a certificate application or discipline a certificate holder for certain reasons.

The board may inspect an abstracter's records at any time to determine if the abstracter is complying with the board's rules. According to the testimony, a timeliness standard of three weeks has been used to determine whether the abstracter is operating in a timely manner. A logbook is required to be maintained by an abstracter. The logbook provides the data necessary to determine if the three-week standard is being met. Disciplinary measures the board may take include canceling or suspending a certificate of authority or certificate of registration, requiring additional education, establishing a mentor or monitor, restricting practice parameters, or imposing a fine of up to $500 per violation. Until 2005 the board did not have the authority to bring in a temporary abstracter when an abstract company or an individual abstracter lost a certificate due to a violation of the rules. The change to NDCC Section 43-01-23 grants the board the authority to issue a temporary certificate for someone willing to come in and perform the work in the affected county. Although the board may not charge a fee for the temporary license, the board may require additional security. The board may review the abstracter's logbooks at any time; however, the logbooks are not an open record.

The committee also received testimony regarding the qualifications of abstracters and abstract companies from the North Dakota Land Title Association. According to the testimony, abstracters are professionally trained in the research of real estate records and are the first line of defense in assuring good title. An abstract company must meet certain requirements, including having a set of the county land title records. An abstract plant is a complete set of records and a complete set of transactions. It was noted that abstracters provide the expertise to thoroughly research land records and prepare the abstracts of title upon which attorneys rely in their examination and preparation of title opinions. State law that requires an updated abstract and a title opinion issued by an attorney before title insurance may be issued has been a source of controversy because some interested persons want a short path to title insurance. It was noted that it is undeniable that the combination of title work prepared by a licensed abstracter and the examination by a North Dakota attorney results in relatively trouble-free titles in North Dakota.

According to the testimony, some individuals believe that the title insurance agents, their employees, or other unlicensed persons are capable of doing the research and examination required to write quality title insurance. It was noted that while some believe this method is a less expensive and faster process for consumers, the result will be incorrect data and damage to the consumer. An uncertified title researcher is not subject to the statutory fee schedule and may charge as much as the market will bear. According to the testimony, any argument that abstracting fees cost the consumer more money is unfounded, especially if an unregulated, nonprofessional search results in a defective title. As a result of the process required in North Dakota, it was noted that the state has some of the lowest title insurance claims due to its certified search and examination procedures.

North Dakota Recorders Information Network

The committee received testimony that advances in technology have allowed for some electronic access to records. One of the electronic programs through which subscribers can access real estate records is a program known as the North Dakota Recorders Information Network (NDRIN). In the aftermath of the flooding in the Red River Valley in 1997, discussions began about the need for preservation and technology enhancements for the state. Committees were formed and with the assistance of Cass County and the Federal Emergency Management Agency (FEMA) a workable plan was developed and implemented to microfilm all real estate records in all 53 counties and to provide storage of that film in a secure, offsite location. A grant from FEMA for $1.2 million allowed all counties in the state to develop methods to ensure that valuable records can be replaced in the event of a disaster. The grant also allowed a central repository to be built for storage of electronic records. It was noted that the system not only provides another means of safeguarding the recorders' records but also provides access to public records via the Internet.

The North Dakota Recorders Information Network operates under a joint powers agreement from each participating county. All counties except Divide, Renville, Grand Forks, Traill, Grant, Emmons, Logan, and Dickey participate in NDRIN in some way. The program has a subscriber-based website for access to images and information. There is a $100 one-time setup fee and a $25 per month access fee for all the information on NDRIN. As of the date of the testimony, there are 2,656 subscribers, including oil and gas companies, landowners, attorneys, realtors, abstracters, credit bureaus, state offices, banks, appraisers, and private individuals. It was noted that one of the requirements of the FEMA grant was that records must be microfilmed and be kept offsite. According to the testimony, microfilming is the only recognized form of archiving. All backup records are kept at an underground storage facility in Hutchinson, Kansas.

Licensure of Title Insurance Agents

In response to testimony that raised concerns about the regulation of title insurance companies in the state, the committee received testimony from the Insurance Department regarding title insurance and the licensing of title insurance agents. According to the testimony, an applicant who is applying for a license for title insurance in North Dakota is exempt from the examination requirements if the applicant is a licensed abstracter or attorney or if the applicant has at least 80 hours of training provided by an insurance company licensed in the line of title insurance. There are statutory continuing education requirements for any person who is licensed in the lines of property, casualty, life and annuity, accident and health, personal lines, or crop insurance. A person who is licensed only for the line of title insurance is exempt from any ongoing continuing education requirements specific to insurance agents; however, it was noted that because many title agents are licensed as attorneys, they are subject to continuing education requirements to maintain their professional license as an attorney. There are about 400 title agents licensed by the state, about half of whom are residents of the state. The 200 licensed nonresidents are licensed under a reciprocal agreement with another state. A company selling title insurance in the state without a certificate of authority would be dealt with by the Insurance Department. It was noted that there is no evidence of any title insurance companies doing business without the required certificate.

A title insurance company is issued a certificate of authority, whereas an agent is issued a license. Testimony recommended that in determining liability for a loss, the policyholder may look to both the agent and the principal for the loss. It was noted, however, that the company should not be precluded from being held liable. It was recommended that NDCC Section 26.1-20-05 be changed to provide for the revocation of the individual agent's license for a violation of Section 26.1-20-05, not the certificate of authority for the entire title insurance company. It was also suggested that a change to this section be made to allow for flexibility on the part of the Insurance Department with respect to the revocation or suspension of a certificate of authority or an insurance producer license for violations of Section 26.1-20-05.

Regulation of Out-of-State Lenders

During the course of the committee's discussion of abstracters, title opinions, and title insurance, the committee received testimony that raised concerns that there should be an examination of ways to regulate, control, and tax out-of-state companies that are making loans in North Dakota. According to the testimony, some out-of-state companies are not following North Dakota laws and the companies are charging for the work being done in connection with their loans. It was noted that these companies are taking a lot of income out of North Dakota without paying any taxes. The testimony indicated that closing their loans here; collecting fees for services supposedly performed here, such as title searches; and writing title insurance on property in the state should be enough to require those companies to register in North Dakota, file reports with the state, and pay income taxes on the income they generate from the ancillary services. It was also noted that the out-of-state companies are meeting the evidence of title requirement but may not be getting an abstract. According to the testimony, the out-of-state companies are charging the purchaser a search fee that is about the same amount as an abstract update but without the accuracy of an abstract.

In response to these concerns, the committee received testimony from the Department of Financial Institutions regarding the regulation of out-of-state lenders. The Department of Financial Institutions oversees the licensing of money brokers under NDCC Chapter 13-04.1. As of April 14, 2008, the department had 369 active licensed money brokers, 49 of which are located in North Dakota. The department also oversees the licensing of consumer finance companies for which loans are limited to $35,000. If the consumer finance companies are engaging in home equity lending, the company also would be required to obtain a money broker license so they could exceed the $35,000 limitation. State law offers exemptions for banks, credit unions, saving and loan associations, insurance companies, the farm credit administration, real estate brokers, salespersons who assist a client in obtaining financing, and various other types of entities. It also was noted that the regulator for out-of-state banks, credit unions, and thrifts may be the department's counterpart state regulatory agency for the home state of the bank or credit union or a federal agency. If the out-of-state lender does not have a physical presence in the state, the lender is likely regulated by federal law or the law of another state.

Conclusion

It was the consensus of the committee that while there are some ambiguities involving NDCC Section 26.1-20-05 and the impact this section may have on consumers, these ambiguities and concerns do not warrant legislative changes. The committee makes no recommendation regarding the abstracters, title opinions, and title insurance study.

STATEWIDE AUTOMATED VICTIM INFORMATION AND NOTIFICATION SYSTEM STUDY

Section 1 of House Bill No. 1219 authorized the Information Technology Department to establish a statewide automated victim information and notification (SAVIN) system. Section 2 of House Bill No. 1219 directed a study of the feasibility and desirability of establishing a SAVIN system to provide information and notify registered victims regarding the status of an offender.

Background

North Dakota Law Regarding Victims' Rights

North Dakota Century Code Chapter 12.1-34 provides for the rights granted to a victim of a crime in North Dakota. Section 12.1-34-02 provides that victims of crime have certain rights, such as the right to receive

prompt notice of the inmates' release from custody, the right to be informed of the parole and pardon process, the right to be notified of the parole board and pardon advisory board's decision, the right to be notified of protection available in cases of intimidation, and the right to be informed of appropriate and available community services. Section 12.1-34-03 provides that victims and witnesses have responsibilities, such as aiding in the prosecution of the crime; cooperating with law enforcement authorities throughout the investigation, prosecution, and trial; and notifying law enforcement authorities, the prosecuting attorney, the custodial authority, and others involved in the process of any change of address.

North Dakota Century Code Chapter 12.1-34 also establishes the entities that are responsible for providing victim services and victim information and notification. Section 12.1-34-04 designates the prosecuting attorney as the person responsible for securing for victims and witnesses of crime the rights and services described in Chapter 12.1-34. Section 12.1-34-02 provides that law enforcement is responsible for providing information to victims and witnesses regarding investigations and arrests. This section also provides that custodial authorities, which include the Department of Corrections and Rehabilitation and the state's jails and regional correctional facilities, are responsible for informing victims and witnesses if a criminal defendant receives a temporary, provisional, or final release from custody or if the defendant escapes from custody.

In addition to the rights and responsibilities that NDCC Chapter 12.1-34 provides to victims and witnesses, Chapter 12.1-35 addresses certain services and rights that are to be provided to victims and witnesses who are children. Section 12.1-35-02 provides that state's attorneys are encouraged to provide additional services to children who are involved in criminal proceedings as victims or witnesses, including explanations of all legal proceedings in which the child will be involved.

The Department of Corrections and Rehabilitation, through its Victim Services Program, employs a victim coordinator who is responsible for informing victims of inmate status changes and issues. The program also provides victims with crises intervention and referral information. The Victim Service Program works closely with the State Parole Board and the Pardon Advisory Board and also serves to educate law enforcement, prosecutors, judiciary, and the public on victims' rights, needs, and issues. The other custodial authorities in the state--the jails and regional correctional facilities--are responsible for providing information to victims and witnesses regarding an offender's release from custody.

House Bill No. 1219 (2007)

House Bill No. 1219, as introduced, would have directed the Information Technology Department to establish the SAVIN system. The bill directed the Department of Corrections and Rehabilitation to ensure that an offender's information contained in the SAVIN system was updated to notify a victim regarding an offender's status. The bill also directed other custodial authorities to cooperate with the Department of Corrections and Rehabilitation in establishing and maintaining the SAVIN system. The fiscal note for the introduced bill included a 2007-09 general fund cost of $3.33 million and a 2009-11 cost of $986,518.

As passed, the language of Section 1 of the bill, which has been codified as NDCC Section 12.1-34-06, authorized the Information Technology Department to establish a SAVIN system that may be administered by the Department of Corrections and Rehabilitation. The system must permit a victim to register or update the victim's registration information for the system by calling a toll-free telephone number or accessing a public website and must notify a registered victim when certain events relating to the offender occur.

Testimony and Committee Considerations

The committee received extensive information and testimony from the Criminal Justice Information Sharing (CJIS) Initiative of the Information Technology Department regarding the status of the establishment of a SAVIN system. The committee also sought the opinions of those directly involved in the process of providing information and notification for victims, including law enforcement, correctional facilities, and victim advocacy organizations. The committee's considerations centered on the desirability of establishing a SAVIN system and the implementation and funding for the SAVIN system.

Desirability of Establishing a SAVIN System

The committee received periodic reports from the Information Technology Department regarding the status of a federal grant for the establishment of a SAVIN system. In December 2006 the Information Technology Department submitted an application to the federal Bureau of Justice Assistance for a federal grant for a SAVIN system. In October 2007 notification was received that North Dakota had been awarded the grant. At the October 30, 2007, meeting of the Legislative Council's Budget Section, the Information Technology Department, on behalf of CJIS, requested authorization for an increase of $1.4 million in federal spending authority. The Budget Section requested that CJIS refine the future costs of implementing a SAVIN system. The Budget Section also delayed the authorization of the spending authority until the Judiciary Committee had the opportunity to make a recommendation regarding the SAVIN system. According to the report, the ongoing costs of the program are $423,998 per year or $847,996 per biennium. The SAVIN system is expected to have a two-year implementation cycle.

According to the testimony, the Information Technology Department will contract with a vendor for the SAVIN system services. It was noted that Appriss, Inc., is the only company with an existing service that meets the federal grant requirements. Appriss, Inc., provides automated victim notification services in 44 states. It was noted that the department would attempt to negotiate a two-year to five-year contract with this company at an estimated yearly cost of $311,150.

In response to the request of the Budget Section for the Judiciary Committee to make a recommendation regarding the SAVIN system, the committee received testimony regarding the desirability of establishing a SAVIN system.

Testimony from various law enforcement agencies indicated that law enforcement spends a great deal of time notifying domestic violence victims about the status of an abuser or offender. The status notification includes notifying the victim when protection orders have been served and when an abuser is released from jail. According to the testimony, these services can be streamlined in an automated system. It was noted that 47 other states use an automated system. The testimony also indicated that an automated system would allow law enforcement and detention staff to better use their time in providing emergency services, serving protection orders, investigating crime, and attending to the ever-growing jail population. According to the testimony, information provided to a victim is not only a right, but it also may be the only thing that keeps a victim feeling safe and able to continue with everyday life.

The testimony of a county jail administrator indicated that a SAVIN system will provide local jurisdictions another means to notify victims of crimes as required under NDCC Chapters 12.1-34 and 12.1-35. It was noted that the system would be extremely helpful to many of the local jails that do not have an automated notification process. For those counties that have an automated process in place, a SAVIN system will allow those to enter information and provide a secondary means of notification.

Testimony from a county victim witness coordinator also expressed support for a SAVIN system. According to the testimony, many victims are not notified of any criminal procedures and may not be aware that their offender has been charged with a crime. Many rural counties do not have the resources to provide services to victims. With a SAVIN system, prompt notification of release can be made. The testimony indicated that this information will give victims some sense of security and control over their lives. The system also would provide a way to track victims for statistical purposes. According to the testimony, a SAVIN system would give victim service providers more time to provide more direct services to victims.

The committee also received testimony in support of a SAVIN system from victim advocacy organizations. According to the testimony, victims have a need to be kept informed of the criminal case involving their victimization. For victims of domestic violence and sexual assault, their safety and security depend on access to timely information of the criminal case proceeding and the service of protection orders. In 2006 domestic violence advocacy programs assisted 754 individuals in seeking emergency protection orders. When a victim seeks a protection order, advocates work with the victim to develop a safety plan that is primarily based on the victim's past experience with the offender but also seeks to predict how the offender may react when served with the order. According to the testimony, it is imperative for a victim to know when the protection order was served and how the offender reacted in order for the victim to determine which safety plan option to implement, such as going to a shelter or staying in the residence. The information gathered through the enhanced communication between the criminal justice system and victims will lead to the establishment of better rapport with victims, an increased level of trust in the criminal justice system, and the ability for victims to be empowered through knowledge. The testimony indicated that a SAVIN system will empower victims with knowledge and allow victims to better determine their needs in regard to the safety and security of their lives.

Other testimony in support of a SAVIN system was received from a victim whose daughter was shot and killed 28 years ago. According to the testimony, there had been numerous incidents involving the man who was convicted of her daughter's murder of which she never received direct notification, including the offender's escape from prison on two different occasions. The testimony indicated that the victim has the right to be the first to be notified when there is any information about the criminal. It was noted that because victim service providers cannot be working around the clock, a SAVIN system would provide victims with the needed information. It was also noted that a SAVIN system would enable a victim to feel more in control of the situation which would help alleviate some of the victim's frustration.

In response to committee concerns regarding the operation of the SAVIN system, the testimony indicated that it would be the responsibility of the victim to sign up for the notification and to keep contact information updated. Under a SAVIN system, the information would be updated on a daily basis. It was noted that system does not replace victim coordinators, but, rather, it gives them another tool to assist victims.

In light of the testimony in support of the establishment of a SAVIN system, the committee recommended that the Budget Section authorize the Information Technology Department to accept the federal grant and to expend the funds in the grant for the SAVIN system. At its March 19, 2008, meeting, the Legislative Council's Budget Section authorized the expenditure of the Bureau of Justice Assistance SAVIN grant.

SAVIN System Implementation and Funding

Upon authorization of the Bureau of Justice Assistance SAVIN grant, the committee received information regarding the implementation of the program. According to the testimony, the Information Technology Department had refined the cost estimates for the SAVIN system and the necessary ongoing funding required for maintaining the program. It was noted that matching funds for the project will come from the Supreme Court's unified court information system replacement project and the CJIS Interface Projects that will supply data to the SAVIN system as well as the CJIS portal. The Legislative Assembly approved the court's information system replacement project in 2007 and the funding is in the court's budget. According to the testimony, the implementation estimates were provided by the vendor given the state's size and functional

requirements. It was reported that these estimates plus estimated nonvendor costs range from $1.2 million to $1.4 million, which indicated that the project can be accomplished using the federal grant funds awarded. It was noted that because of the delay in obtaining approval for expending the funds, the department intended to apply for the one-year extension that will extend the project to June 30, 2010.

The committee received testimony that in light of the implementation of the SAVIN system, there would be a need for legislative changes to various state laws regarding victim notification. In response to this information, the committee considered a bill draft that would change the current victim notification laws to require the victim and other concerned citizens to register with the SAVIN system to receive their victim notifications. The bill draft makes the changes to the North Dakota Century Code which will be necessary upon implementation of the SAVIN system. The bill draft provides that some of the notification duties that are currently the responsibility of certain entities, including prosecuting attorneys, courts, or custodial authorities, would be automated under the SAVIN system.

The committee received testimony from a victim advocacy organization which expressed concerns that an automated system may affect some of the victim's rights that are provided for in current law, particularly regarding the notification of pretrial release. According to the testimony, if a victim must be registered to be notified, some victims may not get the notification. It was noted that there are some victims who do not want to release their notification information to anyone out of fear that the offender may gain access to the information. According to the testimony, it would be helpful if the advocacy organization would be permitted to register with the SAVIN system on behalf of the victim. The testimony expressed a concern that the bill draft and the SAVIN system change the rights of the victims.

Testimony in support of the bill draft indicated that the SAVIN system is intended to retain all rights that victims are afforded under the current system. It was noted that not all information will be relayed to victims and witnesses through the SAVIN system. Some information will continue to be the responsibility of the entity to relay to the victim. The SAVIN system puts the responsibility on the victim to keep the victim's contact information updated. The registration system will allow up to six contact telephone numbers and up to three e-mail addresses. The SAVIN system will replace those notification situations that were previously handled by a letter or a telephone call. In other notification situations, there will still be direct notification from an entity. Finally, it was noted that the SAVIN system is not intended to replace the current notification system, but, rather, it is an additional tool that will be available to make some of the notification process automated and more efficient.

Several committee members expressed concerns regarding the use of the term "address" as it related to the information required from a victim for notification. The committee made the decision to change the term to "contact information." The committee also requested that the bill draft clarify that all contact information must be kept confidential.

Recommendation

The committee recommends House Bill No. 1041 relating to statutory changes necessary for the implementation of a SAVIN system. The bill changes the current victim notification laws to require the victim and other concerned citizens to register with the SAVIN system to receive the victim notifications. The bill provides that some of the notification duties that currently are the responsibility of certain entities, including prosecuting attorneys, courts, or custodial authorities, would be automated under the SAVIN system.

CRIME VICTIM COMPENSATION FUNDING STUDY

House Concurrent Resolution No. 3048 directed a study of crime victim compensation funding, including a review of other states' efforts, and the receipt of input from victim advocacy groups and medical providers.

Background

North Dakota Law Regarding Crime Victims

North Dakota Century Code Chapter 12.1-34 establishes that certain entities are responsible for providing victim services and victim information and notification. Under this chapter, the prosecuting attorney is responsible for securing for victims and witnesses of crime the rights and services described in the chapter; law enforcement is responsible for providing information to victims and witnesses regarding investigations and arrests; and custodial authorities are responsible for informing victims and witnesses about the status of a criminal defendant.

In addition to the rights and responsibilities that NDCC Chapter 12.1-34 provides to victims and witnesses, Chapter 12.1-35 addresses services and rights that are to be provided to victims and witnesses who are children. Section 12.1-35-02 provides that state's attorneys are encouraged to provide the additional services to children who are involved in criminal proceedings as victims or witnesses.

Victim Services Program

The Victim Services Program, which is a program within the Field Services Division of the Department of Corrections and Rehabilitation, manages a comprehensive crime victim delivery system. The program has a victim coordinator who informs victims of inmate status changes and issues. This position also provides victims with crisis intervention and referral information. The program works closely with State Parole Board and the Pardon Advisory Board as well as serves to educate law enforcement, prosecutors, judiciary, and the public on victims' rights, needs, and issues.

The other aspect of the Victim Services Program is the crime victims compensation fund and assistance programming. In 1993 the responsibility for crime victim compensation was transferred to the Department of

Corrections and Rehabilitation from the former Worker's Compensation Bureau. The funding under this program is available to victims who have been physically or emotionally injured in a violent crime in North Dakota; North Dakota residents injured by an act of terrorism in a foreign country; dependents of a homicide victim; and individuals who assume responsibility for funeral or medical expenses of a homicide victim. This fund serves as a payer of last resort to victims. This secondary source pays only for losses not paid by other sources, such as medical insurance, medical assistance, sick leave or annual leave paid by the employer, Social Security, workers' compensation, or other disability benefits.

Testimony and Committee Considerations

The committee received testimony and information from the Department of Corrections and Rehabilitation and from victim advocacy groups. The committee's consideration focused on victim compensation funding levels and sources and on methods used in other states to fund victim compensation programs.

Victim Compensation Funding Levels and Sources

The crime victims compensation fund can reimburse victims for up to $25,000 of damages related to medical expenses, forensic expenses, wages lost, and funeral expenses as a result of a violent crime. Wage loss is limited to an award of not more than $300 per week. Allowable funeral expenses are limited to $3,000. Recovery is not available under this program for property loss.

The funding for crime victim compensation in the state is derived from federal and special funds. No general funds have been appropriated for the crime victims compensation program. The sources of the special funds include gifts, donations, restitution, inmate industry salaries, offender supervision fees, and other correctional fees. The federal fund allocation is set on a formula that reflects state effort. The more the state spends using state dollars, the more the federal government provides in the next biennium. The victim compensation program receives about $150,000 to $200,000 per biennium in federal Victims of Crime Act funds. According to the testimony, because the biennial appropriation for crime victim compensation has been set at $425,403 since 1993 and because the number of applications for assistance continues to rise every biennium, the crime victims funding program exceeds its budget every biennium. It also was noted that the point in the biennium at which the program depletes its funds occurs earlier and earlier each biennium. The testimony indicated that the program is very important and should be adequately funded, especially in light of continuously increasing medical costs. It was estimated that the program needs about $1 million per biennium to be adequately funded.

The program ended the 2005-07 biennium with a deficit of approximately $500,000. In 2007 the Legislative Assembly gave the department a one-time appropriation of $515,855 to help the program become current with its bills for a total appropriation of $942,258. The additional funds appropriated to the program were the result of funding designated for a drug treatment pilot project that was not established. As of February 29, 2008, $165,233 of the original appropriation remained. It was projected that the program will end the biennium with a deficit of $350,000 to $500,000.

Testimony from victim advocacy groups indicated that society has a responsibility to make victims whole. The testimony stressed the importance of keeping the crime victims compensation fund solvent. It was noted that money may be paid out in small amounts, but for each victim, that amount of money is important. The fund helps domestic violence victims pay for medical treatment, counseling, and lost wages. The medical providers often must wait until the next biennium to receive payment. During the 1995-97 biennium, the crime victims compensation program implemented an 80 percent pay policy. Under this policy, the program asks vendors to write off 20 percent of their medical bill and the program pays the remaining 80 percent. The testimony stressed the need for the state to make an investment of general fund dollars. It was noted that charitable contributions are used to provide emergency assistance funds to victims, but the charitable contributions are not enough and do not provide consistency.

For the 2005-07 biennium, the crime victims compensation performance data included the following information:

- Number of claims pending at the beginning of the biennium - 10.
- Number of claims received during the biennium - 552.
- Number of claims for payment - 451.
- Number of victims age 17 and under - 152.
- Number of victims age 18 to 64 - 295.
- Number of victims age 65 and older - 4.
- Number of claims not approved for payment - 97.
- Number of claims pending at the end of biennium - 14.
- Total expenses paid - $493,623.83.

Other States' Funding of Crime Victim Compensation Programs

All states have a crime victims compensation program; however, states vary in the amount the state pays victims and how the states fund their program. State compensation program funding comes from a mix of state and federal resources. Forty-one states, including the District of Columbia and Puerto Rico, depend solely or primarily on offender fees for funding. Forty-seven states can trace at least some of their funding to offender fees. Eleven states are solely or primarily dependent on legislative appropriations from general revenue. Two neighboring states have annual general fund appropriations--Montana has a $587,000 general fund appropriation and Minnesota has a $1,828,750 general fund appropriation. Wisconsin uses a mixed appropriation of $488,000 in offender fees and approximately $1,512,000 from its general fund.

The testimony received by the committee indicated that the sources and amounts of offender fees vary

greatly. For example, the California crime victims compensation program receives about half its state income from penalties assessed on fines; the other half is from fines ranging from $200 to $10,000 on felonies and $100 to $1,000 on misdemeanors, plus income from fines on traffic offenses, infractions, and civil violations. The Iowa program receives income from a $100 civil penalty charged each person convicted of operating a motor vehicle while under the influence for reinstatement of that person's driver's license. The program also receives 18 percent of the state's 95 percent share of a 30 percent surcharge on all criminal fines. The South Dakota program receives $2.50 on every criminal conviction, including traffic violations. In Wyoming the program's funding comes from a court-ordered minimum assessment of $100 for each felony or high misdemeanor conviction and $50 for some other misdemeanors.

The testimony indicated that assessing fees to offenders is one way to fund programs, such as the crime victims compensation program. It was noted, however, that offenders rarely have the money to pay the fees. It was suggested that consideration be given to the possibility of collecting a fee that would be dedicated to the crime victims compensation fund. It was noted that those states that have dedicated fees that do well are states that assess the fee to the largest number of people using the smallest fee possible to generate the income needed.

It was the consensus of the committee that in light of the court administration fees and other costs already imposed on offenders, increasing offender fees would not be a reliable way to provide additional funding for victim compensation.

Recommendation

The committee recommends that in 2009 the Legislative Assembly provide $550,000 in additional funding to adequately fund the Department of Corrections and Rehabilitation's crime victims compensation program.

AUCTIONEER PRACTICES AND LAWS STUDY

Section 9 of Senate Bill No. 2008 directed a study of the practices and laws relating to the sale of real estate by auctioneers, including a review of the sale of multiple parcels of property at a single sale. The legislative history of this section indicated that there was a concern about the auction process that involves the sale of real estate. It was noted that complaints about the process used when selling multiple parcels of real estate at a single sale may indicate a need for more regulation of the auction process.

Background

Licensure of Auctioneers

North Dakota Century Code Chapter 51-05.1 governs the licensing of auctioneers and auction clerks. Section 51-05.1-04 defines an auctioneer as "a person, who for a compensation or valuable consideration, sells or offers for sale either real or personal property at public auction as a whole or partial vocation." Section 51-05.1-01 provides that a person may not conduct a sale as an auctioneer or an auction clerk without a license issued by the Public Service Commission. Section 51-05.1-02 provides that licenses may be granted only to persons with a good reputation for honesty, truthfulness, and fair dealing and who are competent to transact the business of an auctioneer or auction clerk. Section 51-05.1-01.1 provides that the fee for the annual license or renewal is $35. This section also requires that before a license is issued, the applicant must file a corporate surety bond with the commission.

North Dakota Century Code Section 51-05.1-01.2 provides for exceptions to licensure as an auctioneer. This section provides that a license is not required for the sale of an estate by an executor or an administrator, sale by a sheriff or other person under court order, sale by a public official acting in an official capacity, or sale of purebred or registered livestock. Section 51-05.1-03 contains the grounds for which a license may be refused, suspended, or revoked. This section also provides that a person has a right to a hearing before the Public Service Commission before a license may be revoked or suspended.

North Dakota Century Code Section 51-05.1-04.1 provides that "[a]n auctioneer may not sell the property of another at auction without a prior written contract with the seller which sets forth the terms and conditions upon which the auctioneer will sell the property. . . ."

Other North Dakota Laws and Rules Applicable to Auctioneers

Other laws that are applicable to auctioneers and auction clerks are NDCC Chapter 9-06, formation of a contract; Chapter 3-05, agency relationships; Chapter 51-12, false advertising; Chapter 36-09, brands and marks; Chapter 51-15, consumer fraud and unlawful credit practices; Chapter 41-02, sales; Chapter 41-06, bulk transfers; and Chapter 57-39.2, sales tax.

Administrative rules regarding auctioneers are contained in North Dakota Administrative Code Article 69-08. The rules include the requirements for approved auction schools and the retention of records by auction clerks.

Testimony and Committee Considerations

The committee received testimony from a representative of the Public Service Commission, auctioneers, and landowners. The committee's consideration centered on the auctioneer licensing requirements and the need for additional regulation of auctioneers.

Auctioneer Licensing Requirements

The committee received testimony from the Public Service Commission regarding auctioneer licensing requirements. The Licensing Division of the Public Service Commission has had jurisdiction over auctioneer licensing since 1957. Before 1957 auctioneers were licensed by the county treasurer of the county in which the auction sale was held. In 1975 the Public Service Commission's responsibility was expanded to include

the jurisdiction over auction clerks. While the auctioneer is responsible for selling or offering property for sale at public auction, the auction clerk is responsible for recording each item offered for sale, collecting all proceeds of the sale, paying all expenses of the sale, and making settlement to parties.

An auctioneer must meet all license requirements before a license can be issued. An applicant must file an application form along with a $35 license fee; two completed reference forms; a surety bond, with an attached power of attorney; and proof of satisfactory completion of an approved course of study relating to auctioneers or proof that the applicant has been actively engaged as a licensed auctioneer for a period of at least one year preceding the date of application. The bond must provide annual coverage of not less than $5,000 for an auctioneer or $10,000 for an auction clerk. The auction clerk also must meet license requirements before a license can be issued. Although auction clerks do not have to complete an approved course of study relating to auctioneers, they are required to maintain a trust account for handling funds collected at auction sales. The auctioneer and auction clerk may not sell the property of others without a prior written contract containing specific items as provided in NDCC Section 51-05.1-04.1.

The Public Service Commission has used an electronic database program to issue auctioneer and auction clerk licenses since 1992. The current database program, developed in 1998, also monitors the status of auctioneer and auction clerk licenses. Since 1998 the commission has revoked 10 auctioneer licenses and six auction clerk licenses for failure to maintain adequate bond. In 2004 the commission revoked an auction clerk license after the licensee failed to pay a party for items sold at public auction. There are two administrative rules for auctioneers. The first rule provides for the requirements for auction schools and the second rule provides for the closing requirements for auction clerks. It was noted that the administrative rules do not address how auction sales are conducted.

Need for Additional Regulation of Auctioneers

The committee reviewed information regarding the real estate auction practices in other states. The information was based upon a survey conducted by the Public Service Commission. The information indicated that of the states surveyed--Alabama, Arizona, Arkansas, Kansas, Louisiana, Massachusetts, North Carolina, Oklahoma, Oregon, South Dakota, and Washington--only South Dakota addresses the issue of the manner in which parcels of land are sold. South Dakota Administrative Rule 20:69:06:07 provides, in part, "[i]f property being sold by auction is put up in tracts, each tract is the subject of a separate sale."

To address the issues raised in the study regarding a review of the sale of multiple parcels of property at a single sale, the committee considered a bill draft that would prohibit the use of a multiparcel bidding system or a choice of tract bidding system for real estate auctions.

In response to the bill draft, the committee received considerable testimony in opposition to placing additional regulations on the practices of auctioneers. Testimony from landowners indicated that if a landowner wants to sell real estate by auction, the auctioneer and the seller should decide how the auction is to be conducted. According to the testimony, the bill draft would take away the seller's rights and would interfere with the right to contract. It was noted that the law should protect the seller from unqualified or dishonest auctioneers but should not interfere with the contract between the auctioneer and the seller. It was emphasized that the restrictions proposed in the bill draft are not needed.

Other testimony indicated that North Dakota's laws regarding auctioneers are among the best in the nation. The testimony indicated that the seller's choice to decide how an auction is to be conducted should not be removed. It was noted that buyers at an auction have the choice as to whether they want to bid and how much they want to bid.

Testimony in opposition to the bill draft from representatives of the auctioneer industry indicated that the bill draft is unnecessary, is not comprehensive, and will thwart the auctioneers' efforts to get the top price for the sellers. According to the testimony, buyers at an auction are made aware of the terms of the auction in the advertising for the sale and are given a full disclosure of the terms of the sale immediately before the bid opening begins. If real estate is being offered for sale in tracts and the seller elects to hold the bids open and tie the property together as one parcel, a description of the process is also given at that time. It was noted that buyers are entitled to have agents and other representatives to represent them in the bidding process. As in any business affair, buyers are entitled to have professional representation at an auction sale, including attorneys, real estate brokers, appraisers, lenders, and other agents.

The testimony emphasized that sellers should be able to direct how the sale of their property will be conducted, and the final decision as to how property will be split for sale should be for the seller to decide. According to the testimony, legislation that seeks to put limitations on how real estate can be sold should not be exclusive to auctioneers but should have equal impact on real estate brokers, attorneys, and others who deal in the sale of real property. It was also noted that legislation requiring that property offered in tracts must be the subject of a separate sale would be harmful to sellers because buyers could agree that one party will not bid on a certain tract if another party does not bid on another tract, thus creating an artificial price ceiling. Finally, it was noted that the state's interest in auctions should be to ensure that the transactions are fair, not to interfere with private contracts.

The committee also received testimony regarding the bill draft and the study from a sponsor of the legislation that prompted the study. According to the testimony, during the 2007 legislative session the sponsor was made aware of a problem associated with certain practices involving real estate sales by auctioneers. The testimony indicated that at that time there appeared to be strong support from an association of auctioneers for

some type of regulation. It was noted, however, that since that time the demand for intervention has ended and that the auctioneers no longer desire action on this subject from the Legislative Assembly. It was also noted that the discussion on this issue has been healthy and will lead to self-discipline within the industry.

Conclusion

The committee determined that there is not a need for legislative involvement in the area of the specific terms of an auction involving real estate. It was the consensus of the committee that the study be concluded and that the committee make no recommendation as a result of the study.

UNIFORM LAWS REVIEW

The North Dakota Commission on Uniform State Laws consists of 11 members. The primary function of the commission is to represent North Dakota in the National Conference of Commissioners on Uniform State Laws. The national conference consists of representatives of all states and its purpose is to promote uniformity in state law on all subjects 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 commission plans on recommending these Acts to the Legislative Assembly in 2009:

- Amendment to Section 21 of the Uniform Anatomical Gift Act approved by the Executive Committee of the national conference in 2008.
- Amendments to the Uniform Interstate Family Support Act approved by the national conference in 2008. The Uniform Interstate Family Support Act is tied to a federal mandate enacting the 2000 Hague Convention on Maintenance, which was signed by the President in 2008. The amendments modify the current version of the Act's international provisions to comport with the obligations of the United States under the convention. The federal enacting legislation states that a version of this Act must be passed by 2010.
- Amendments to the Uniform Principal and Income Act approved by the national conference in 2008. The amendments will bring the Uniform Principal and Income Act into compliance with Internal Revenue Service comments regarding allocation of IRA distributions in Section 409 and clarify the formula for calculating how much a trust needs to distribute and how much it can use to pay taxes.
- Amendments to the Uniform Probate Code approved by the Executive Committee of the national conference in 2008 and amendments to the Uniform Probate Code approved by the national conference in 2008, except for the provisions for cost-of-living adjustments. The amendments update the intestacy provisions of the Uniform Probate Code which deal with inheritance by children.
- Uniform Adult Guardianship and Protective Proceedings Act. This Act addresses the issue of jurisdiction over adult guardianships, conservatorships, and other protective proceedings and provides a mechanism for resolving multistate jurisdictional disputes arising because there are more than 50 guardianship systems in the United States.
- Uniform Debt-Management Services Act, including the 2008 technical amendments. This Act applies to consumer debt counseling services and debt-management services and provides for registration requirements, bond requirements, and disclosure requirements.
- Uniform Emergency Volunteer Health Practitioners Act. This Act allows reciprocity to other states' licensees on emergency services providers so that covered individuals may provide services without meeting the disaster state's licensing requirements, specifically the problem of allowing out-of-state medical professionals to practice in the afflicted areas.
- Uniform Prudent Management of Institutional Funds Act. This Act provides statutory guidelines for management, investment, and expenditures of endowment funds held by charitable institutions, and expressly provides for diversification of assets, pooling of assets, and total return investment to implement whole portfolio management.
- Uniform Revised Limited Liability Company Act. This Act permits formation of limited liability companies, which provide the owners with the advantages of both corporate-type limited liability and partnership treatment. The commission will introduce a study resolution on this Act.

The committee makes no recommendations regarding these uniform Acts.

RACING COMMISSION REPORT

The committee received a report from the director of the Racing Commission. The Racing Commission is the regulatory body in charge of regulating live and simulcast racing in the state. The Racing Commission is a member of the Association of Racing Commissioners International, an organization that monitors racing on both a national and international level and is constantly creating and modifying rules for the regulation and improvement of racing. The dues paid to the Association of Racing Commissioners International, approximately $5,000 in 2006, are based upon a percentage of the handle.

The Racing Commission's primary responsibilities are to regulate live and simulcast races as well as to license all of the participants, including simulcast service providers, tote operators, simulcast site operators, live track providers, simulcast employees, and live racing participants, including owners, trainers, and jockeys.

Because racing deals with live horses, qualified veterinarians are hired to ensure the safety of the animals. Certified stewards are needed for the regulation of the races. The winners of all races are tested for drugs to assure the integrity of racing. One of the most important areas of regulation is to protect the interest of the pari-mutuel wagers. Audits, investigations, and inspections of the pari-mutuel facilities are done for the protection of those wagering in our state. According to the report, pari-mutuel wagering is the driving force that supports the live horse racing industry in North Dakota.

Racing simulcast sites are located in Belcourt, Bismarck, Fargo, Williston, and Grand Forks. The Racing Commission is interested in adding more simulcast sites.

The Racing Commission's biennial budget is about $400,000. Pari-mutuel wagering from 1997 through 2006 generated approximately $18 million for the state's general fund. The Racing Commission has been appropriated between $120,000 and $150,000 per biennium out of the general fund for administrative costs. In 2007 the Racing Commission licensed a new service provider, which resulted in generation of about $4.7 million in handle.

LOTTERY REPORT

The committee received a report from the director of the North Dakota Lottery regarding the operation of the lottery. According to the report, the lottery's mission is to maximize net proceeds for the benefit of the state by promoting entertaining games; providing quality customer service to retailers and players; achieving the highest standards of integrity, security, and accountability; and maintaining public trust.

For the 2007-09 biennium, the lottery's appropriation was $2.519 million for operating expenses and $1.412 million for salaries and benefits for 10.5 full-time equivalent (FTE) positions. The appropriation funds nine FTE positions in the Lottery Division of the Attorney General's office, one FTE position in the Information Technology Division, and a one-half FTE position in the Finance and Administration Division. The appropriation also funds three part-time draw operators. The lottery has a continuing appropriation for variable expenses of prizes, retailer commission, online gaming system vendor fees, and Multi-State Lottery Association game group dues. The lottery recently celebrated its fourth anniversary and enjoys broad public support in the play of its games. The challenge facing the lottery is to increase ticket sales and state general fund revenues each year in a very competitive market environment. The subscription service launched in November 2005 accounts for about 2.4 percent of total draw sales and it is trending toward the lottery's goal of 5 percent of total sales or about $1.2 million per year.

For the 2007-09 biennium, the lottery has projected sales of $47.8 million and net proceeds of $12.4 million. It was noted that the lottery is on track to meet or exceed these projections.

According to the report, a vital part of the lottery's mission is to maximize revenue for the state's general fund. To do this, the lottery must be innovative, energetic, and offer exciting and attractive games that add value to the lottery's product mix for players to play, license retailers that are in convenient locations to sell tickets, develop attractive point-of-sale items, have creative marketing promotions, provide quality customer service to retailers and players, and control operating expenses. During the 2007-09 biennium, the lottery has done or has plans to relaunch each of the four games currently being played. During the 2007-09 biennium, the lottery is monitoring the development of another game planned for 2010 and plans to conduct a raffle with another state lottery, which is planned for the end of 2008.

TECHNICAL CORRECTIONS - RECOMMENDATION

The committee continued the practice of reviewing the Century Code to determine if there are inaccurate or obsolete names and statutory references or superfluous language. The committee recommends House Bill No. 1042 to make technical corrections throughout the Century Code. The following table lists the sections affected and describes the reasons for the change:

1-02-12	The change relates to the effect of the language contained in headnotes and is the result of a change in publication style.
15.1-13-32	This section, which refers to a 2007 report to the Legislative Assembly, is repealed.
16.1-01-09	The change relates to the underscoring of statutory language appearing in a legislative bill and is the result of a change in drafting style.
33-06	Chapter 33-06, relating to eviction, is repealed and moved to a new location in Title 47, relating to property.
47-32	This change creates a new chapter relating to eviction. This chapter was previously located in Title 33.
57-39.2-18	This change is the result of a reference to a time period following a specific date. Because the date has passed, the reference is no longer necessary.
57-40.2-09	This change is necessary due to the removal of a date reference that left the sentence grammatically deficient.

MISCELLANEOUS

In response to a request from the chairman of the Legislative Council, the committee received testimony and reviewed state and federal laws regarding the possession of firearms by individuals who have been convicted of certain offenses. North Dakota Century Code Section 62.1-02-01 prohibits certain offenders from possessing or using firearms for a number of years after the completion of a period of probation. The testimony indicated that perhaps the court could have more discretion in this matter, especially in the case of deferred imposition of sentence cases. The committee reviewed state laws, the federal Gun Control Act of 1968, and the related federal regulations regarding this issue. Because of the likelihood that any state action on this issue would be preempted by federal law, the committee makes no recommendation.

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.
- 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 Bob Skarphol (Chairman), Ole Aarsvold, Larry Bellew, Merle Boucher, Kari L. Conrad, Jeff Delzer, Bette Grande, Patrick R. Hatlestad, RaeAnn G. Kelsch, Kenton Onstad, Louis Pinkerton, Blair Thoreson, and Francis J. Wald and Senators Randel Christmann, Dwight Cook, Jerry Klein, Judy Lee, and Harvey D. Tallackson.

The committee submitted this report to the Legislative Council at the biennial meeting of the Council in November 2008. The Council accepted the report for submission to the 61st Legislative Assembly.

During the 2007-08 interim, the State Auditor's office and independent accounting firms presented 7 performance audit and evaluation reports and 117 financial or information technology application audit reports. An additional 39 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. At the end of this report is a listing of the audit reports accepted by the committee.

The committee was assigned the following duties and responsibilities for the 2007-08 interim:

1. Receive the annual audit report for the State Fair Association (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 (Sections 10-19.1-152, 10-32-156, and 45-10.2-115).
3. Receive annual reports on the writeoffs of accounts receivable at the Department of Human Services and Developmental Center at Westwood Park (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. (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. (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 performance audit report of Job Service North Dakota upon the request of the Legislative Audit and Fiscal Review Committee (Section 52-02-18).
7. Determine necessary performance audits. (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. Approve the State Auditor's hiring of a consultant to assist with conducting a performance audit (Section 54-10-01).
9. Determine the frequency of audits or reviews of state agencies (Section 54-10-01(2)).
10. Determine when the State Auditor is to perform audits of political subdivisions (Section 54-10-13).
11. Direct the State Auditor to audit or review the financial records and accounts of any political subdivision (Section 54-10-15).
12. Study and review audit reports submitted by the State Auditor (Section 54-35-02.2).
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 (Sections 65-02-03.3 and 65-02-30).

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. For audit periods covering fiscal years ending June 30, 2006, and thereafter, auditors of state agencies and institutions are requested to address the following six audit questions:

1. What type of opinion was issued on the financial statements?
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 and the management responses.

In addition, auditors are asked to communicate to the Legislative Audit and Fiscal Review Committee eight issues which identify:

1. Significant changes in accounting policies, any management conflicts of interest, any contingent liabilities, or any significant unusual transactions.
2. Significant accounting estimates, the process used by management to formulate the accounting estimates, and the basis for the auditors' conclusions regarding the reasonableness of those estimates.
3. Significant audit adjustments.
4. Disagreements with management, whether resolved to the auditors' satisfaction, relating to a financial accounting, reporting, or auditing matter that could be significant to the financial statements.
5. Serious difficulties encountered in performing the audit.
6. Major issues discussed with management prior to retention.
7. Management consultations with other accountants about auditing and accounting matters.
8. High-risk information technology systems critical to operations based on the auditors' overall assessment of the importance of the system to the agency and its mission, or whether any exceptions identified in the six audit report questions to be addressed by auditors are directly related to the operations of an information technology system.

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 for an audit of the State Auditor's office for the years ended June 30, 2007 and 2006. The firm presented its audit report at the committee's November 11, 2007, meeting. The audit report contained an unqualified opinion and included one internal control weakness relating to review and timely adjustments of recorded transactions.

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, 2006, and June 30, 2007, Comprehensive Annual Financial Reports.

NORTH DAKOTA UNIVERSITY SYSTEM ANNUAL FINANCIAL REPORT

The committee received the North Dakota University System's annual financial report for the fiscal year ended June 30, 2007. An unqualified opinion was issued on the financial statements. As of June 30, 2007, the University System had total assets of $1,037 million and total liabilities of $335 million, resulting in a net assets total of $702 million. The total net assets increased $28 million during fiscal year 2007.

The annual degree credit headcount for the fall of 2006 was 42,237, less than a 1 percent increase over the previous fall enrollment. The revenues from student tuition and fees were $218,669,000 for the fiscal year ended June 30, 2007, which is an increase of 8 percent as compared to the fiscal year ended June 30, 2006. During the 2006-07 academic year, the campuses raised tuition rates an average of 9.4 percent.

PERFORMANCE AUDITS AND EVALUATIONS

University of North Dakota School of Medicine and Health Sciences

A representative of the State Auditor's office presented the performance audit report for the University of North Dakota School of Medicine and Health Services. The performance audit was conducted by the State Auditor's office and DJW Associates, Lexington, Kentucky, at the request of the Legislative Audit and Fiscal Review Committee.

Pursuant to NDCC Section 15-52-01, the purpose of the School of Medicine and Health Sciences is to provide facilities for the coordination, improvement, expansion, and unification of health and welfare activities of the state and its agencies, political subdivisions, and private practitioners. Section 15-52-15 requires the School of Medicine and Health Sciences to compile a list of cities, towns, and other municipalities in the state without a qualified physician or dentist, or with an insufficient number of qualified physicians or dentists, and to endeavor to supply physicians or dentists to such cities, towns, and other municipalities. Section 15-52-29 authorizes and directs the School of Medicine and Health Sciences to provide or encourage means for providing for the training of such psychiatrists and other psychiatric personnel as may be necessary to properly staff state institutions and agencies providing services in the field of mental health.

The performance audit included 35 recommendations. Major recommendations include:

1. The School of Medicine and Health Sciences should comply with state laws regarding the purpose and duties of the medical school or take appropriate action to modify state laws. The school has not taken appropriate action to comply with legislative intent or initiate changes to state law.
2. The School of Medicine and Health Sciences should ensure its mission statement is consistent with legislative intent established in state law. The mission statement is not consistent with the purpose of the School of Medicine and Health Sciences established in Section 15-52-01. Resources used to accomplish the mission of the school may not be in accordance with legislative intent. The mission statement was last modified in 1996.
3. The School of Medicine and Health Sciences should investigate increasing the number of residency and fellowship positions supported by Medicare direct medical education and indirect medical education and carefully review any plans to increase residency or fellowship positions with the Residency Review Committee. Under the Resident Physician Shortage Reduction Act, North Dakota is eligible to receive additional resident slots.
4. The School of Medicine and Health Sciences should provide additional incentives to encourage and reward faculty to commercialize intellectual property arising out of their research. Incentives may be needed to encourage faculty to compete for small business innovation research or small business technology transfer grants.
5. The School of Medicine and Health Sciences should establish specific performance measures for monitoring the effectiveness of the operations of the school. The process used by the school to develop its strategic plan appears appropriate but contains limited measurable performance goals or objectives. Appropriate benchmarks or other standards to measure the school's performance should be identified.
6. The School of Medicine and Health Sciences should modify its policy relating to faculty reviews and evaluations and ensure it complies with State Board of Higher Education and University of North Dakota policies. State Board of Higher Education and University of North Dakota policies require all faculty to receive annual performance evaluations. The school established a policy where tenured faculty receives evaluations during their fourth year of tenure and every third year thereafter.
7. The School of Medicine and Health Sciences should comply with State Board of Higher Education and University of North Dakota purchasing policies and procedures. The school did not receive informal quotes or proposals for certain expenditures and did not have written agreements in place for certain services which were to be provided pursuant to written contracts.
8. The School of Medicine and Health Sciences should formally review the nonresident tuition rates to make a determination as to whether the rates should be increased. The nonresident medicine tuition rate was reduced by 25 percent at the beginning of the 2006-07 academic year. The new rate is 1.85 times higher than the resident tuition rate. Both the undergraduate and graduate nonresident rates at the University of North Dakota are 2.67 times higher than the resident rate.

The committee learned the top three priorities for the School of Medicine and Health Sciences are having its Department of Family Medicine in the top 10 departments in the nation, having the best Center for Rural Health in the nation, and having the best medical school educational program in the nation.

The committee learned the Bismarck and Minot Centers for Family Medicine are fully accredited. The Minot program began in 1975 and is accredited through April 2009. The Bismarck program began in 1976 and is accredited through September 2011.

The committee later learned the School of Medicine and Health Sciences has addressed 29 of the 35 recommendations with action taken to ensure substantial compliance with the recommendations. Action plans have been developed for the remaining six recommendations.

The committee accepted the performance audit report of the University of North Dakota School of Medicine and Health Sciences.

Administrative Committee on Veterans Affairs and Department of Veterans Affairs Performance Audit Followup

The Legislative Audit and Fiscal Review Committee accepted the followup report presented to the committee on the Administrative Committee on Veterans Affairs and the Department of Veterans Affairs. The original performance audit was presented to the Legislative Audit and Fiscal Review Committee in August 2004. The followup report indicated 18 of the original recommendations have been fully implemented, 8 of the original recommendations have been partially implemented, and 1 recommendation was determined not to be implemented.

The committee learned the department has purchased new software to assist in monitoring services being provided to veterans.

Wildlife Services Program

A representative of the State Auditor's office presented the performance audit report for the Wildlife Services program. The performance audit was conducted by the State Auditor's office pursuant to Chapter 36 of the 2007 Session Laws.

The North Dakota Wildlife Services program is a cooperative effort of state and federal agencies to

provide management of wildlife in situations impacting livestock producers, farmers, homeowners, airports, and public land managers. The program is administered by the United States Department of Agriculture, Animal and Plant Health Inspection Service (APHIS), Wildlife Services. A cooperative service agreement between APHIS and the North Dakota Department of Agriculture is entered into each biennium. A separate cooperative service agreement is entered into each biennium between the Department of Agriculture and the Game and Fish Department relating to funding of the program.

The performance audit included 11 recommendations. Major recommendations include:

1. The Department of Agriculture should periodically verify that the Wildlife Services program billed amounts are adequately supported and reasonable. Currently, bills submitted to the Department of Agriculture are one-page documents with little detail and the Department of Agriculture does not review support maintained by APHIS to ensure amounts are supported and reasonable.
2. The Department of Agriculture should require that the Wildlife Services' field specialists dedicate a certain amount of time in the fall to the state blackbird problem. The loss of revenue and economic impact due to blackbirds in sunflowers can be significant.
3. The Department of Agriculture should improve monitoring of cooperative service agreements to ensure compliance with requirements. Required discussion relating to employment, salaries, expenses, and purchases did not occur and information required to be submitted to the Department of Agriculture was not provided.

The committee learned the state provided $680,000 from the game and fish fund and $240,000 from the general fund for a total of $920,000 for the Wildlife Services program for the 2007-09 biennium.

The committee learned the Wildlife Services program currently uses nonlethal methods of blackbird control, including habitat management and harassment. A poison-baiting program would be effective on blackbirds but would also impact other birds. Spring baiting would be more effective because the blackbird population is lower in the spring than in the fall and the blackbirds are hungry as they migrate back into the state. The committee learned a test poison control program to reduce the population of blackbirds in South Dakota was abandoned after severe criticism by national organizations and birdwatching groups.

The committee accepted the performance audit report of the Wildlife Services program.

Department of Corrections and Rehabilitation Performance Audit Followup

The Legislative Audit and Fiscal Review Committee accepted the followup report presented to the committee on the Department of Corrections and Rehabilitation. The original performance audit was presented to the Legislative Audit and Fiscal Review Committee in January 2005. The followup report indicated 26 of the original recommendations have been fully implemented, 19 of the original recommendations have been partially implemented, 5 recommendations were determined not to be implemented, and 1 was determined to be no longer applicable.

The committee learned the Department of Corrections and Rehabilitation will begin conducting education and employment skill-level assessments during orientation for new inmates.

The committee learned the Department of Corrections and Rehabilitation uses county jails for transition purposes so an inmate can get a job and be closer to family. County jails are not used for inmates with medical needs or inmates with disciplinary problems.

The committee learned most juveniles at the Youth Correctional Center have severe mental health issues and have been placed on psychotropic drugs before they enter the juvenile system. The juveniles are often not in the system long enough to "wean" them from the prescription drugs.

Workforce Safety and Insurance Performance Audit Followup

The Legislative Audit and Fiscal Review Committee accepted the followup report presented to the committee on Workforce Safety and Insurance. The original performance audit was presented to the Legislative Audit and Fiscal Review Committee in November 2006. The followup report indicated 19 of the original recommendations have been fully implemented, 36 of the original recommendations have been partially implemented, 3 recommendations were determined not to be implemented, and 2 were determined to be no longer applicable.

The State Auditor's office recommended that Workforce Safety and Insurance make improvements in its use of public funds. During a review of expenditures made by Workforce Safety and Insurance to determine compliance with the recommendation, the auditors identified concerns regarding a severance payment to the former executive director. Workforce Safety and Insurance disagrees with the auditors' assertion that the approximately $128,000 payment made to the former executive director may not meet the requirements of state law. The State Auditor's office has requested an Attorney General's opinion regarding the legality of the payment.

The committee requested the State Auditor's office provide the committee with all communications between the State Auditor's office and the Burleigh County State's Attorney relating to Workforce Safety and Insurance, including all correspondence, e-mails, faxes, subpoenas, summons and complaints, and other information received or sent during the period beginning July 1, 2005, and ending November 15, 2008. The information must be provided to the committee staff and the Attorney General's office by December 1, 2008.

Workforce Safety and Insurance Performance Evaluation

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 evaluation focused on safety grants, the Board of Directors, performance measures, fraud expenditures, claims, policyholder services, and the administrative hearing process. The evaluation was conducted by Berry, Dunn, McNeil & Parker Certified Public Accountants and Management Consultants, Portland, Maine. The resulting report included 46 recommendations. Major recommendations include:

- Workforce Safety and Insurance should utilize the public rulemaking process to engage the employer and employee constituents in the development of the hazard elimination learning program (HELP) grant and safety training and education program (STEP) grant eligibility requirements, the application process, and the decisionmaking process.
- Workforce Safety and Insurance should market the STEP grant program more actively.
- Workforce Safety and Insurance should consider modifying board member appointment criteria to include specific skills and experience relevant to a state workers' compensation fund.
- Workforce Safety and Insurance should increase focus on conducting provider and employer fraud investigations and strengthen collaboration between internal and external organizations.

The committee learned that 61 of the 109 prior recommendations from the 2006 performance evaluation report have been fully implemented, 23 were partially implemented, and 25 have not been implemented.

The committee learned Workforce Safety and Insurance made $35 million available for safety grant programs and awarded $3.9 million in safety grants during the 2005-07 biennium.

The committee learned the performance evaluation's findings indicate there were no inappropriate claims handling processes or decisions inconsistent with state law or Workforce Safety and Insurance claim policies identified.

Department of Emergency Services and Collection and Use of 911 Fees Performance Audit Followup

The Legislative Audit and Fiscal Review Committee accepted the followup report presented to the committee on the Department of Emergency Services and collection and use of 911 fees. The original performance audit was presented to the Legislative Audit and Fiscal Review Committee in January 2006. The followup report indicated 13 of the original recommendations have been fully implemented, 9 of the original recommendations have been partially implemented, and 4 recommendations were determined not to be implemented.

The committee learned the Department of Emergency Services has developed an appropriate formula for calculating fees to ensure costs for services are covered. Fee increases will become effective on July 1, 2009.

INFORMATION TECHNOLOGY AUDITS

North Dakota Network and Security Audit

A representative of ManTech Security and Mission Assurance presented the North Dakota network and security audit report. The audit focused on four tasks--external vulnerability assessment, internal vulnerability assessment, penetration testing, and application security assessment.

The external vulnerability assessment identified 313 systems at state agencies or organizations with at least one vulnerability that would provide an external attacker with a possible attack vector that could lead to compromise of the state's network from the Internet. The external vulnerability assessment identified 10 unique high-risk vulnerabilities on multiple systems, 2 unique medium-risk vulnerabilities on multiple systems, and 4 unique low-risk vulnerabilities on multiple systems. The external vulnerability assessment resulted in the following general recommendations:

- Review content available on publicly accessible servers.
- Filter inbound access to all state systems.
- Ensure segregation between kindergarten through grade 12 and other education networks and the state network.

The internal vulnerability assessment identified 427 systems at state agencies or organizations with at least one vulnerability that would provide an attacker with a possible attack vector that could lead to compromise of the state's network and sensitive information. The internal vulnerability assessment identified 29 unique high-risk vulnerabilities on multiple systems, 8 unique medium-risk vulnerabilities on multiple systems, and 4 unique low-risk vulnerabilities on multiple systems. The internal vulnerability assessment resulted in the following general recommendations:

- Segment public facing servers from internal network.
- Internal segregation of critical servers and development systems.
- Include applications in formal patch management program.
- Implement outbound access control.
- Require use of encrypted protocols for remote management.

The penetration test identified nine state systems to target based on vulnerability assessment results. The test team was unsuccessful in exploiting eight of the systems but was successful in exploiting one system to create an account with administrator privileges. The penetration test resulted in the following general recommendations:

- Educate users on social engineering techniques.
- Ensure servers and desktops are kept current on all operating system and application patches.

An application security assessment was performed on the state's PeopleSoft application. The application security assessment identified two vulnerability findings with the application and its associated components--one high-risk vulnerability relating to the operating system installed on the application host and one low-risk design flaw. The application security assessment resulted in the following general recommendations:

- Ensure systems hosting applications are kept up to date.
- Prevent simultaneous logins.

The committee accepted the North Dakota network and security audit report.

Information Technology Department Information System Audit

A representative of the State Auditor's office presented the Information Technology Department information system audit for the year ended December 31, 2007. The audit resulted in the following three recommendations relating to the general controls of the Information Technology Department:

- Test the disaster recovery plan on a yearly basis.
- Develop a formal security plan.
- Develop a formal risk assessment framework.

The committee accepted the Information Technology Department information system audit report.

OTHER REPORTS

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 2007 was received and accepted by the committee. Accounts receivable writeoffs as of June 30, 2007, were $3,419,396 at the State Hospital, $139,868 at the Developmental Center, and $797,152 at the human service centers.

The department's report for fiscal year 2008 was also received and accepted by the committee. Accounts receivable writeoffs as of June 30, 2008, were $5,124,040 at the State Hospital, $51,877 at the Developmental Center, and $852,235 at the human service centers.

Racing Commission

The committee received a report from the Racing Commission regarding funds made available for track purses in 2008. The committee learned the Racing Commission granted $45,750 from the purse fund and $22,500 from the breeders' fund for a total of $68,250 to the Outdoor Recreation Development Association for purse money at the Chippewa Downs racetrack in Belcourt. The Outdoor Recreation Development Association ran 53 races in six race days and used breeders' fund money to supplement purses for certified North Dakota-bred races only. The Racing Commission provided $6,500 from the breeders' fund to supplement the purses by $3,250 for each of a North Dakota-bred thoroughbred futurity race and an older thoroughbred stakes race. The remaining $16,000 was used to supplement the purse for 11 other North Dakota-bred races.

The committee learned the Racing Commission initially committed $102,500 from the breeders' fund to Horse Race North Dakota for races at the North Dakota Horse Park in Fargo. To comply with legislative intent, the Racing Commission made a motion at its July 18, 2008, meeting to discontinue transferring money from the breeders' fund to supplement purses. As a result of the motion, Horse Race North Dakota did not receive any supplemental funding from the breeders' fund. Horse Race North Dakota received $361,750 from the purse fund for races at the North Dakota Horse Park in Fargo. Horse Race North Dakota paid out $7,000 per race for six certified North Dakota-bred races for a total of $42,000 and $4,000 per race for six open stake races for a total of $24,000.

OTHER INFORMATION

The committee received other information and reports including information and reports relating to:

- National State Auditors Association peer review process.
- Workforce Safety and Insurance annual report.
- Department of Corrections and Rehabilitation educational and vocational programs.
- Benefits of the Tax Department's GenTax integrated tax system.
- Developmentally disabled facility loan program.

AUDIT REPORTS ACCEPTED BY THE LEGISLATIVE AUDIT AND FISCAL REVIEW COMMITTEE DURING THE 2007-08 INTERIM

Agency	Audit Report Date	Meeting Date Accepted
Addiction Counseling Examiners, Board of	June 30, 2007 and 2006	July 8, 2008
Adjutant General	June 30, 2006 and 2005	November 19, 2007
Administrative Hearings, Office of	June 30, 2007 and 2006	October 20, 2008
Aeronautics Commission	June 30, 2007 and 2006	November 19, 2007
Ag PACE Fund	June 30, 2007 and 2006	November 19, 2007
Agriculture, Department of	June 30, 2007 and 2006	October 20, 2008
Architecture, Board of	June 30, 2005 and 2004	August 14, 2007
Architecture, Board of	June 30, 2007 and 2006	October 20, 2008
Attorney General	June 30, 2006 and 2005	November 19, 2007
Audiology and Speech-Language Pathology, Board of Examiners on	June 30, 2005, 2004, 2003, and 2002	August 14, 2007
Bank of North Dakota	December 31, 2006 and 2005	August 14, 2007
Bank of North Dakota	December 31, 2007 and 2006	July 8, 2008
Barber Examiners, Board of	August 31, 2003 and 2002	August 14, 2007
Barber Examiners, Board of	August 31, 2005 and 2004	August 14, 2007
Barber Examiners, Board of	August 31, 2007 and 2006	July 8, 2008
Beef Commission	June 30, 2007 and 2006	November 19, 2007
Beginning farmer revolving fund	December 31, 2006 and 2005	August 14, 2007
Beginning farmer revolving fund	December 31, 2007 and 2006	July 8, 2008
Bismarck State College	June 30, 2007 and 2006	July 8, 2008
Building Authority	June 30, 2006 and 2005	August 14, 2007
Building Authority	June 30, 2007 and 2006	November 19, 2007
Career and Technical Education, Department of	June 30, 2007 and 2006	October 20, 2008
Chiropractic Examiners, Board of	December 31, 2006	August 14, 2007
Clinical Laboratory Practice, Board of	June 30, 2007 and 2006	October 20, 2008
College SAVE (BND)	December 31, 2007 and 2006	July 8, 2008
Commerce Department	June 30, 2007 and 2006	November 19, 2007
Commission on Legal Counsel for Indigents	June 30, 2007 and 2006	October 20, 2008
Community Water Facility Loan Fund	December 31, 2006 and 2005	August 14, 2007
Community Water Facility Loan Fund	December 31, 2007 and 2006	July 8, 2008
Corrections and Rehabilitaiton, Department of (performance audit followup)	January 24, 2008	July 8, 2008
Corrections and Rehabilitation, Department of	June 30, 2007 and 2006	July 8, 2008
Cosmetology, Board of	June 30, 2006	August 14, 2007
Cosmetology, Board of	June 30, 2007	October 20, 2008
Council on the Arts	June 30, 2007 and 2006	October 20, 2008
Counselor Examiners, Board of	June 30, 2006 and 2005	August 14, 2007
Dental Examiners, Board of	June 30, 2007 and 2006	July 8, 2008
Development Fund, Inc.	June 30, 2007 and 2006	November 19, 2007
Developmentally Disabled Facility Loan Program	December 31, 2006 and 2005	August 14, 2007
Developmentally Disabled Facility Loan Program	December 31, 2007 and 2006	July 8, 2008
Dickinson State University	June 30, 2007 and 2006	July 8, 2008
Dietetic Practice, Board of	September 30, 2007 and 2006	October 20, 2008
Division of Emergency Management/Use of 911 fees (performance audit followup)	July 17, 2008	October 20, 2008
Education Standards and Practices Board	June 30, 2006	August 14, 2007
Education Standards and Practices Board	June 30, 2007	October 20, 2008
Electrical Board	June 30, 2007 and 2006	October 20, 2008
Financial Institutions, Department of	June 30, 2006 and 2005	November 19, 2007
Firefighter's Association	April 30, 2007 and 2006	February 26, 2008
Funeral Service, Board of	June 30, 2006 and 2005	August 14, 2007
Funeral Service, Board of	June 30, 2008 and 2007	October 20, 2008
Game and Fish Department	June 30, 2006 and 2005	August 14, 2007
Governor's Office	June 30, 2007 and 2006	October 20, 2008
Guaranteed Student Loan Program	September 30, 2006 and 2005	August 14, 2007
Guaranteed Student Loan Program	September 30, 2007 and 2006	February 26, 2008
Health, State Department of	June 30, 2007 and 2006	October 20, 2008
Highway Patrol	June 30, 2006 and 2005	August 14, 2007
Historical Society	June 30, 2006 and 2005	August 14, 2007
Housing Finance Agency	June 30, 2006 and 2005	August 14, 2007
Housing Finance Agency	June 30, 2007 and 2006	February 26, 2008
Human Services, Department of	June 30, 2007 and 2006	July 8, 2008
Indian Affairs Commission	June 30, 2006 and 2005	August 14, 2007
Industrial Commission	June 30, 2007 and 2006	July 8, 2008
Information Technology Department	June 30, 2006 and 2005	November 19, 2007
Information Technology Department information system audit	December 31, 2007 and 2006	July 8, 2008
Insurance Commissioner	June 30, 2007 and 2006	July 8, 2008
Job Service North Dakota	June 30, 2007 and 2006	February 26, 2008
Judicial Branch	June 30, 2007 and 2006	October 20, 2008
Labor Department	June 30, 2007 and 2006	October 20, 2008
Lake Region State College	June 30, 2007 and 2006	July 8, 2008
Law Examiners, Board of	June 30, 2007 and 2006	July 8, 2008
Legislative Assembly	June 30, 2007 and 2006	November 19, 2007
Legislative Council	June 30, 2007 and 2006	November 19, 2007
Lottery, North Dakota	June 30, 2006 and 2005	August 14, 2007
Lottery, North Dakota	June 30, 2007 and 2006	February 26, 2008
Management and Budget, Office of	June 30, 2007 and 2006	February 26, 2008
Mandan remediation and supplemental environmental projects trusts	December 31, 2006 and 2005	February 26, 2008
Massage, Board of	June 30, 2005 and 2004	August 14, 2007
Mayville State University	June 30, 2007 and 2006	July 8, 2008
Medical Examiners, Board of	December 31, 2005 and 2004	August 14, 2007
Medical Examiners, Board of	December 31, 2006	October 20, 2008
Mill and Elevator Association	June 30, 2007 and 2006	November 19, 2007
Minot State University	June 30, 2007 and 2006	July 8, 2008
Minot State University-Bottineau	June 30, 2007 and 2006	July 8, 2008
North Dakota State University	June 30, 2007 and 2006	July 8, 2008
North Dakota University System	June 30, 2006	August 14, 2007

Nursing Home Administrators, Board of Examiners for	June 30, 2004 and 2003	November 19, 2007
Nursing Home Administrators, Board of Examiners for	June 30, 2006 and 2005	November 19, 2007
Nursing, Board of	June 30, 2007 and 2006	October 20, 2008
Occupational Therapy Practice, Board of	June 30, 2007 and 2006	October 20, 2008
Optometry, Board of	June 30, 2006 and 2005	August 14, 2007
PACE fund	June 30, 2006 and 2005	August 14, 2007
PACE fund	June 30, 2007 and 2006	November 19, 2007
Parks and Recreation Department	June 30, 2007 and 2006	October 20, 2008
Peace Officer Standards and Training Board	December 31, 2006 and 2005	October 20, 2008
Pharmacy, Board of	June 30, 2006 and 2005	August 14, 2007
Pharmacy, Board of	June 30, 2007 and 2006	July 8, 2008
Physical Therapists, Examining Committee for	June 30, 2006 and 2005	July 8, 2008
Plumbing, Board of	June 30, 2007 and 2006	November 19, 2007
Podiatry Examiners, Board of	December 31, 2007 and 2006	October 20, 2008
Potato Council	June 30, 2006 and 2005	August 14, 2007
Private Investigative and Security Board	December 31, 2006 and 2005	July 8, 2008
Professional Engineers and Land Surveyors, Board of Registration for	June 30, 2006	August 14, 2007
Professional Engineers and Land Surveyors, Board of Registration for	June 30, 2007	July 8, 2008
Professional Soil Classifiers, Board of Registration for	June 30, 2006	July 8, 2008
Professional Soil Classifiers, Board of Registration for	June 30, 2007	July 9, 2008
Protection and Advocacy	June 30, 2006 and 2005	August 14, 2007
Psychologist Examiners, Board of	June 30, 2005 and 2004	August 14, 2007
Public Accountancy, Board of	June 30, 2006	August 14, 2007
Public Accountancy, Board of	June 30, 2007	November 19, 2007
Public Employees Retirement System	June 30, 2006 and 2005	August 14, 2007
Public Employees Retirement System	June 30, 2007 and 2006	February 26, 2008
Public Finance Authority	December 31, 2006 and 2005	August 14, 2007
Public Finance Authority	December 31, 2007 and 2006	July 8, 2008
Public Instruction, Department of	June 30, 2007 and 2006	July 8, 2008
Public Service Commission	June 30, 2007 and 2006	October 20, 2008
Racing Commission	June 30, 2007 and 2006	July 8, 2008
Real Estate Appraiser Qualifications and Ethics Board	June 30, 2005, 2004, 2003 and 2002	August 14, 2007
Real Estate Commission	June 30, 2006	August 14, 2007
Real Estate Commission	June 30, 2007	October 20, 2008
Real Estate Commission	June 30, 2008	October 20, 2008
Reflexology, State Board of	June 30, 2006	August 14, 2007
Reflexology, State Board of	June 30, 2007	July 8, 2008
Retirement and Investment Office	June 30, 2006 and 2005	November 19, 2007
Retirement and Investment Office	June 30, 2007 and 2006	February 26, 2008
School of Medicine and Health Sciences performance audit	August 22, 2007	November 19, 2007
Secretary of State	June 30, 2006 and 2005	August 14, 2007
Securities Department	June 30, 2006 and 2005	November 19, 2007
Seed Department	June 30, 2006 and 2005	August 14, 2007
Social Work Examiners, Board of	June 30, 2007 and 2006	July 8, 2008
Soybean Council	June 30, 2007	November 19, 2007
Soybean Council	June 30, 2006	October 20, 2008
State Auditor	June 30, 2007 and 2006	November 19, 2007
State College of Science	June 30, 2007 and 2006	July 8, 2008
State Fair Association	September 30, 2007 and 2006	February 26, 2008
State Network Security audit	June 30, 2007	November 19, 2007
State Treasurer	June 30, 2007 and 2006	July 8, 2008
Statewide CAFR	June 30, 2006	August 14, 2007
Statewide CAFR	June 30, 2007 and 2006	February 26, 2008
Statewide Single Audit	June 30, 2006 and 2005	August 14, 2007
Stockmen's Association	December 31, 2006 and 2005	August 14, 2007
Stockmen's Association	December 31, 2007 and 2006	July 8, 2008
Student Loan Trust	June 30, 2006 and 2005	August 14, 2007
Student Loan Trust	June 30, 2007 and 2006	February 26, 2008
Student Loan Trust	June 30, 2008 and 2007	October 20, 2008
Tax Commissioner	June 30, 2007 and 2006	July 8, 2008
Tax Commissioner - GenTax	June 30, 2007	November 19, 2007
Transportation, Department of	June 30, 2007 and 2006	October 20, 2008
University and School Lands, Board of	June 30, 2006 and 2005	August 14, 2007
University and School Lands, Board of	June 30, 2007 and 2006	February 26, 2008
University of North Dakota	June 30, 2007 and 2006	July 8, 2008
University System office	June 30, 2006 and 2005	August 14, 2007
Valley City State University	June 30, 2007 and 2006	July 8, 2008
Veterans Affairs, Administrative Committee on and Department of (performance audit followup)	October 22, 2007	February 26, 2008
Veterans Affairs, Department of	June 30, 2006 and 2005	August 14, 2007
Veterans Home	June 30, 2007 and 2006	October 20, 2008
Veterinary Medical Examiners, Board of	June 30, 2006 and 2005	August 14, 2007
Water Commission	June 30, 2007 and 2006	October 20, 2008
Water Well Contractors, Board of	June 30, 2006 and 2005	August 14, 2007
Wheat Commission	June 30, 2006 and 2005	August 14, 2007
Wildlife Services performance audit	May 9, 2008	July 8, 2008
Williston State College	June 30, 2007 and 2006	July 8, 2008
Workforce Safety and Insurance	June 30, 2007 and 2006	February 26, 2008
Workforce Safety and Insurance (performance audit followup)	September 25, 2008	October 20, 2008
Workforce Safety and Insurance performance review	December 31, 2007 and 2006	October 20, 2008

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 2009 legislative session. Legislative rules are also reviewed and updated under this authority. The Legislative Council also delegated to the committee the Council's:

1. Duty under Section 54-03-26 to determine the computer usage fee for legislators;
2. 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. Responsibility under Section 54-03-20 to establish guidelines on maximum reimbursement of legislators sharing lodging during a legislative session;
4. Responsibility under Section 54-60-03 to determine which standing committees will receive a report from the Commissioner of Commerce on goals and objectives of the department;
5. Responsibility under Section 4-24-10 to determine when agricultural commodity promotion groups must report to the standing Agriculture Committees;
6. Responsibility under Section 4-35.2-04 to determine when the Agriculture Commissioner must report to the Agriculture Committees on the status of the pesticide container disposal program;
7. Authority under Section 46-02-05 to determine the contents of contracts for the printing of legislative bills, resolutions, and journals; and
8. Authority under Section 54-06-26 to establish guidelines for use of state telephones by legislative branch personnel.

The Legislative Council also assigned to the committee the responsibility under 2007 Session Laws, Chapter 1, Section 7, to administer the appropriation for committee room renovations and the responsibility under Section 8, to review staff services during the 2007-08 interim for the purpose of determining future legislative staffing needs. The Legislative Council also designated the committee as the Legislative Ethics Committee under NDCC Section 54-35-02.8 with the responsibility to consider or prepare a legislative code of ethics.

The Legislative Management Committee was charged with the responsibility to review and adopt the project plan and to approve deliverables of each completed project phase for replacement of legislative technology applications under 2005 Session Laws, Chapter 29, Section 5.

Committee members were Representatives Al Carlson (Chairman), Rick Berg, Merle Boucher, Jeff Delzer, David Monson, and Kenton Onstad and Senators Randel Christmann, Dwight Cook, Carolyn Nelson, David O'Connell, and Bob Stenehjem.

The committee submitted this report to the Legislative Council at the biennial meeting of the Council in November 2008. The Council accepted the report for submission to the 61st Legislative Assembly.

LEGISLATIVE SPACE RENOVATION PROJECTS

Legislative Committee Meeting Room Renovations

Medora and Great Plains Rooms

During the 2005-06 interim, the committee studied the need for additional legislative committee rooms and approved a plan whereby the bill and journal room was divided into two committee rooms and a smaller bill and journal room, which occupied the former hallway between the former bill and journal room (pre-1981 remodeling) and the north wall of the main hallway. Each meeting room occupied 417 square feet, and allowed committee tables and 9 desk chairs and 24 side chairs. The bill and journal room occupied 360 square feet. The expenses of that renovation project totaled $174,792.86.

During the 2007 legislative session a number of legislators expressed dissatisfaction with the small size of the two meeting rooms. When 9 persons were seated at the tables and 18 to 20 people were seated in the side chairs, the room was crowded and line of sight was hindered by the columns in the room.

The committee approved removal of the wall between the Medora and the Great Plains Rooms. The committee also approved designating the resulting room the Medora Room.

Committee Room Tables

All committee room tables were inventoried to determine which tables merited replacement due to wear and tear. During this process, committee members discussed whether committee room table and chair arrangements could be redesigned to improve use of technology, committee member discussions, committee member and audience interaction, and improved space use. Most of the proposed table arrangements were intended to remove audience members from behind committee members either by locating all audience members in multiple rows on one end of the room or rearranging tables. Committee members also suggested providing more spacious audience seating even at the expense of room capacity.

The committee authorized the majority and minority leaders and their assistants to make recommendations to the Legislative Council chairman with respect to committee tables and committee room table arrangements for their respective houses and authorized the chairman to purchase committee room tables as recommended by the respective leaders.

Medora Room Table Arrangement

The first room under consideration was the Medora Room. The committee approved installing a semicircular table following the curvature of the north wall and placing audience chairs along the south wall. This committee arrangement allowed all committee members to face the audience, while also allowing all committee members a line of sight with other committee members. The table consisted of five sections, assembled together, with cantilevered legs from the front so members would not contend with legs on their side of the table. The table is 36 inches wide and oak with inlay black laminate top so as to resist scratches and heat burns and stains.

Red River Room Table Arrangement

The Red River Room consists of 560 square feet, with current arrangement of seven individuals seated at a T-shaped committee table and 20 audience chairs. One option provided for an arc-shaped table seating seven facing the east and 32 audience chairs arranged in three rows along the east wall facing the committee table. Two separate options recognized possible reduction of the room area due to the fire suppression project but the primary difference from option one was the reduction of audience seating to 23 chairs arranged in two rows along the east wall.

Sakakawea Room Table Arrangement

The Sakakawea Room consists of 680 square feet, with current arrangement of 11 individuals seated at a T-shaped committee table and 20 audience chairs. A proposed arrangement provided for a reduced-size committee table allowing for the seating of 11 individuals and 26 audience chairs arranged in three rows along the north wall. This proposal recognized possible reduction of the room area to 580 square feet due to the fire suppression project.

Lewis and Clark Room Table Arrangement

The Lewis and Clark Room consists of 615 square feet, with current arrangement of eight individuals seated at a T-shaped table and 24 audience chairs along the east, north, and west walls. The proposed arrangement provided for an arc-shaped table along the east wall seating eight facing the west and 26 audience chairs in two rows along the west wall and one row along the north wall.

Missouri River Room Table Arrangement

The Missouri River Room consists of 580 square feet, with current arrangement of seven individuals seated at a T-shaped table and 16 audience chairs along the north and south walls. The proposed arrangement provided for eliminating the table at the head of the T-shape and using the existing conference table to provide seating for seven and 22 audience chairs arranged in three rows along the west wall and one row along the north wall.

In October 2008 a new table matching the existing leg of the T-shape was installed at the head of the table to continue the T-shape arrangement, and audience side chairs were rearranged to rows on the west side of the room and one row along the north wall.

Peace Garden Room Table Arrangement

The Peace Garden Room is one of three "pie-shaped" committee rooms--the Fort Union, Peace Garden, and Fort Totten Rooms. Proposed table arrangements included a U-shaped table with a base following the curvature of the outside wall and the two legs following the angle of the interior walls and an L-shaped table with one leg following the curvature of the outside wall and one leg following the angle of the west inside wall with audience seating along the east inside wall.

Fort Union Room Table Arrangement

The Fort Union Room--one of the three "pie-shaped" committee rooms--had a current arrangement of a flattened U, with the open end facing the doors on the south side, and one row of audience seating along the west and east walls.

In October 2008 a modified L-shaped table with one leg following the angle of the west inside wall, one leg following the curvature of the outside wall, and a short turn-in leg along the east wall to allow space for the desk of the intern in the committee room, was ordered for installation before the 2009 legislative session convenes. In addition, 30 audience side chairs will be reupholstered and arranged in diagonal rows in the southeast quadrant of the room.

Fort Lincoln Room Table Arrangement

The Fort Lincoln Room had a current arrangement of eight individuals seated at a T-shaped committee table and a row of audience chairs arranged along the west, north, and east walls.

In October 2008 a U-shaped table with the open end facing north was installed, with audience seating arranged in two rows along the north wall.

House Conference Room Table

The House Conference Room currently has mismatched tables arranged in the center of the room.

In October 2008 a new conference table, along with 16 chairs for seating around the table, was ordered for installation before the 2009 legislative session.

Committee Room Carpeting

The carpeting in committee rooms was installed during the 1977 to 1982 legislative wing renovation project. The carpeting in traffic areas, whether in the rooms or the hallways, was pointed out as showing 25 years or more of wear. Although Facility Management Division is responsible for replacing carpet in the Capitol, carpet replacement is on a floor-by-floor schedule, and funds have not been appropriated for carpet replacement. When carpet has been replaced, the cost has been borne by agencies that have extra funds for carpet purchase.

In October 2008 new carpeting was installed in all committee rooms (except for the Harvest, Pioneer, Prairie, and Roughrider Rooms), the ground floor circular

hallway on the north side of the main hallway, and in the hallway outside the Fort Lincoln Room.

Committee Room Audio, Scheduling, and Video Presentation Systems

The Legislator Computer Replacement Task Force discussed two types of video displays in committee rooms--flat panel video displays and SMART Boards. The task force received proposals for two 42-inch plasma screen flat panels in the Red River, Medora, Fort Union, Peace Garden, and Fort Totten Rooms. The task force also received proposals for one 77-inch SMART Board in the Sakakawea, Missouri River, Lewis and Clark, Fort Lincoln, and Roosevelt Park Rooms.

The committee received information on installing scheduling displays outside the Harvest, Roughrider, and Roosevelt Park Rooms; replacing the audio mixers in the Harvest and Roughrider Rooms; installing loudspeakers, amplifiers, mixers, and microphones in the Red River and Roosevelt Park Rooms; and providing for digital flash recorders in the Harvest, Roughrider, Red River, and Roosevelt Park Rooms.

Capitol Tower Stairway Fire Exits

During the 2005-06 and 2007-08 interims, the Capitol was undergoing a fire suppression project that involved installing a sprinkler system throughout the Capitol and providing direct exit access from the stairways in the Capitol tower. As required under the International Building Code and the National Fire Protection Association, stairways in the tower need to be pressurized to avoid a "chimney" effect of smoke going up the stairways. In addition, a protected path of travel from the stairways to exit the building is required.

The committee reviewed a number of options for providing exits from the north stairway. One option for an exit from the north stairway was to provide an exit through a hall along the west side of the Red River Room (current length by width of 23 feet 4 inches by 21 feet 7 inches), exiting through a new door in an existing window opening, and resulting in a room of 23 feet 4 inches by 16 feet 3 inches. A second option was to provide an exit hallway along the south side of the Red River Room, exiting in the existing corridor and allowing exit through the north entrance, installing doors approximately where the newsstands are to pressurize that exit way, and resulting in a room of 21 feet 2 inches by 21 feet 7 inches. A third option was to provide an exit way by use of the elevator lobby and exiting through the north entrance which would require installation of fireproof glass partitions just east of the elevator doors to allow pressurization of the area.

The committee also reviewed a number of options for providing exits from the south stairway. One option was to provide an exit from the south stairway through a hallway to the east, reducing an office in the Governor's office suite, turning south along the west side of the Sakakawea Room (currently 29 feet 2 inches by 25 feet 9 inches), exiting through a new door in an existing window opening, and resulting in a room of 29 feet 2 inches by 21 feet 7 inches. Another option was to take space from the Governor's office area rather than the Sakakawea Room.

Committee members expressed concern over the loss of space in the Sakakawea Room and the Red River Room.

House Brass Rail

The committee received information on the cost of cutting an opening in the brass rail in the first section on the west side of the House chamber. The estimate to cut one opening on the west side and one opening on the east side of the House chamber to balance the opening on the west side was $5,750.

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 1996 guidelines, reapproved by the committee in June 2008, 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 High School Activities Association State Student Congress on November 6-7, 2008, and on November 5-6, 2009; and by the North Dakota University System for a 150-notebook connection to test the PeopleSoft 9.0 upgrade on April 14-15, 2008; use of the House chamber by the Secretary of State on March 10-11, 2008, to conduct a statewide biennial election conference; by the North Dakota Leadership Seminar on May 31, 2008, for a leadership seminar; by the Silver-Haired Education Association on July 30-August 1, 2008, for a Silver-Haired Assembly; and by the Land Department for oil and gas lease auctions on November 6, 2007, and February 5, May 6, August 5, and November 4, 2008. In addition, approval under the guidelines was given for use of the House chamber by the Supreme Court on October 8, 2007, for the admission to the bar ceremony, and for use of the

House chamber on September 18, 2008, for a Constitution Week commemoration.

Under the guidelines, any permanent display in Memorial Hall is to be reviewed annually. Since removal of two statues and a replica of the liberty bell in 1984, Memorial Hall does not contain any permanent display. (The liberty bell is on display in the entrance/commons area of Century High School in Bismarck.)

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.

During the interim, the Facility Management Division, Office of Management and Budget, manages the scheduling of committee rooms, except for the Harvest and Roughrider Rooms, for which the scheduling is retained by the Legislative Council staff.

The committee approved a request from Human Resource Management Services, Office of Management and Budget, to remove the tables and chairs from the Peace Garden Room so as to place different tables and chairs in the room for the purpose of conducting training classes, so long as those tables and chairs were not placed in any hallway.

The committee reapproved the policy in June 2008.

LEGISLATIVE RULES

The committee continued its tradition of reviewing and updating legislative rules. After the 2007 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. The committee also reviewed a side-by-side comparison of Senate and House rules.

Motions During Debate

Senate and House Rules 312 list the motions that may be received during debate. Senate and House Rules 317 list motions that are not debatable. Senate and House Rules 322 govern the procedure in excusing a member from voting and provide that the question to permit a member to vote must be decided without debate. Neither Senate and House Rules 312 nor 317 refer to a motion permitting a member to vote.

The committee recommends amendment of Senate and House Rules 312 to include a motion to permit a member to vote in the list of motions that may be received during debate. The committee also recommends amendment of Senate and House Rules 317 to include a motion to permit a member to vote in the list of motions that are not debatable.

Bill Introduction Deadlines

Monday Introduction Deadlines

In 2007 the Legislative Assembly convened on Wednesday, January 3, 2007. Because the convening day was a Wednesday rather than a Tuesday, the legislative rules were amended to continue the bill introduction deadlines on Mondays. A Monday deadline is important because the Legislative Council staff uses the Friday evening, Saturday, and Sunday before the deadline to prepare bill drafts requested during the days immediately preceding a deadline.

The committee discussed the effect the current rules would have with the Legislative Assembly convening on Tuesday, January 6, 2009. The committee recommends amendment of Senate and House Rules 402 to change the bill introduction deadlines from the 4th, 9th, and 14th legislative days to the 5th, 10th, and 15th legislative days. This will continue the Monday deadlines during the 2009 legislative session.

Health Mandate Introduction Deadlines

Under NDCC Section 54-03-28, a bill that is considered a health insurance mandate must be considered by the Employee Benefits Programs Committee, must be referred to a standing committee, must have an independent cost-benefit analysis before the standing committee can take action, then must be rereferred to the Appropriations Committee if the bill affects the appropriation for the Public Employees Retirement System. Under the contract with the actuarial firm, the analysis must be completed within four weeks. The committee received information on the difficulty to complete this procedure for a bill introduced on the last day for introducing bills.

The committee recommends amendment of Senate and House Rules 402 to require measures subject to cost-benefit analysis under NDCC Section 54-03-28 to be submitted for consideration by the Employee Benefits Programs Committee no later than April 1 of the year before a regular legislative session for returning legislators or no later than the first Wednesday following the adjournment of the organizational session for newly elected first-time legislators.

Constitutional Revision Committee Members

House Rule 501 provides the Constitutional Revision Committee consist of seven members. During the 2007 legislative session, the committee consisted of nine members.

The committee recommends amendment of House Rule 501 to provide the Constitutional Revision Committee consist of nine members.

Consideration of Majority and Minority Reports

Senate and House Rules 602 state that the majority report should be voted on first before the minority report. Senate and House Rules 601 provide that on a divided committee report the minority report should be substituted for the majority report and a vote taken on that question. House members have questioned the relationship between the two rules and the confusion caused over which report should receive the first vote.

The committee recommends amendment of House Rule 602 to provide the majority report must be placed on the calendar "above" any minority report. The language with respect to placing the majority report on the calendar "for consideration before consideration" of any minority report is deleted. This change is intended to clarify that House Rule 602 is used as a means to prepare the calendar, while House Rule 601 is used to determine the procedure for considering the majority and minority reports.

Delivery of Veto Messages

Joint Rule 209 provides a procedure for return of vetoed bills with objections during the legislative session. If the Secretary of the Senate or the Chief Clerk of the House is not available, the director of the Legislative Council or a Legislative Council employee designated by the director may receive the vetoed bill and the objections as the representative of the appropriate house. No procedure exists for the return of vetoed bills and objections after the Legislative Assembly has adjourned, even though the objections must be published in the journal of the house of origin and in the Session Laws.

The committee recommends creation of Joint Rule 210 to provide that when the Governor vetoes a bill that cannot be returned to the house of origin because the Legislative Assembly is not in session, the objections to the bill must be filed with the Secretary of State and with the director of the Legislative Council for purposes of publishing the objections in the journal of the house of origin and in the Session Laws.

Crossover Deadline

Because the Legislative Assembly convened on a Wednesday in 2007, the crossover deadline was changed from the 34th legislative day to the 33rd legislative day to maintain crossover on a Friday. The 61st Legislative Assembly will convene on Tuesday, January 6, 2009. A crossover deadline of Friday maintains the emphasis to complete work on bills in the original house with a view of an extended recess over the weekend. Joint Rule 702 provides for a recess on the Monday and Tuesday following crossover. The committee recommends amendment of Joint Rule 203 to change the crossover deadline from the 33rd legislative day to the 34th legislative day. This will continue the Friday crossover deadline during the 2009 legislative session.

Media Representative Identification

Joint Rule 802 provides that the statehouse correspondent of the Associated Press distribute identification badges to appropriate representatives of the media. In practice, the correspondent has delegated this responsibility to the North Dakota Newspaper Association.

The committee recommends amendment of Joint Rule 802 to provide that the statehouse correspondent of the Associated Press determine the method for distribution of the media identification badges. The proposed language provides the flexibility to recognize practices that may change in the future.

Other Rules Proposals Considered

The committee reviewed a proposal to amend Senate and House Rules 305 to replace the requirement that a member desiring to speak rise and address the presiding officer and remain standing until recognized with the requirement that the member use the "speak" button at the member's desk. The committee reviewed a proposal to amend Senate Rule 348 to provide that a clincher motion requires approval by a majority of the members-elect rather than a majority of the members present. The committee received a proposal to amend Senate and House Rules 402 to increase the maximum number of sponsors of a bill or resolution to 12 from the current 6. The committee received a proposal to amend Senate and House Rules 506 to require measures to be scheduled for time-certain hearings rather than block-scheduling, whereby groups of measures are all scheduled at the same time. The committee reviewed a proposal to amend Senate and House Rules 318 to recognize the vote required to expend principal of the permanent oil tax trust fund, if the electorate approved constitutional measure No. 1 at the general election (the measure was not approved).

LEGISLATIVE STAFFING NEEDS STUDY

Section 8 of House Bill No. 1001 (2007) directed a review of Legislative Council staff services for purposes of determining future legislative staffing needs, including the appropriateness of the current organizational structure as it relates to future staffing needs and the potential effect of the information technology applications system and pending retirements on staffing needs, succession planning, and knowledge transfer.

The Legislative Council has 33 authorized full-time equivalent positions and as of October 1, 2007, the staff consisted of 30 employees and was organized into legal, fiscal, information technology, administrative, library, and administrative support staffs.

The committee received information on the effect of the growth of information technology applications since 1968. The growth of information technology applications initiated or developed by Legislative Council staff illustrated that information technology is not static and staff constantly reviews how technology can be used to increase efficiencies. As an example, the development by staff of the computerized applications for the bill status report, bill drafts, daily journals, daily calendars,

and committee hearing schedules became the base for the Legislator's Automated Work Station (LAWS) system. Even with the replacement of the legislative applications, enhancements will continue to be made as improvements and efficiencies are envisioned. It was noted that as a result of initiating and developing software programs, staffing needs of the Legislative Council during a legislative session have been reduced from an additional six operators and eight proofreaders to an additional two operators and four proofreaders.

With respect to the effect of pending retirements, the committee received information on the number of employees in various age categories and the fact that qualification for nonreduced Public Employees Retirement System retirement benefits may come as early as age 49.5 without any additional purchase of retirement credit. It was noted retirement is not necessarily based on the age of an employee but other personal factors.

Succession planning is the process of identifying and preparing suitable employees through mentoring to develop their skills and abilities and prepare them for advancement to replace key players within the organization as their terms expire. Effective succession planning consists of five areas--understand the current situation within the organization; work with staff to anticipate transition; prepare the organization for transition; work with emerging leaders and other responsible employees; and guide emerging leaders toward new responsibilities.

Knowledge transfer is a process that can include the passing on of knowledge, information, research findings, or innovations and the adopting or adapting or utilizing of such knowledge, information, research findings, or innovations. The committee received information on the methods used by the Legislative Council staff for knowledge transfer, including mentoring, lines of authority, promotion from within, and procedural manuals.

On November 29, 2007, the Legislative Council named Jim W. Smith, Director of the Legislative Council, to replace John D. Olsrud upon his retirement on November 30, 2007.

As of November 1, 2008, the staff consisted of 32 employees and was organized into three major areas of legal services, fiscal services, and administrative services. Administrative services includes information technology, administrative, library, and administrative support staffs.

Conclusion

As provided by Section 8 of House Bill No. 1001, any recommendations for staffing and organization changes will be reflected in the Legislative Council's 2009-11 budget request.

LEGISLATIVE TECHNOLOGY APPLICATIONS REPLACEMENT PROJECT

Background

During the 1967-68 interim, the Legislative Council staff developed a mainframe-based bill status report system. This system provided information on the status of bills as they progressed through the legislative process from introduction to final disposition. Initially developed as an in-house tracking system for the Legislative Council staff, starting in 1973 two interns in the Legislative Council office completed forms containing status information, delivered those forms nightly to Central Data Processing (the predecessor to the Information Technology Department), and personnel in Central Data Processing keyed the information from the forms into the system and prepared printed bill status reports for the next day. In the 1970s, the Legislative Council staff developed a mainframe-based bill drafting system, which substantially automated the preparation of bill drafts by accessing the North Dakota Century Code database--a mainframe-based database developed for computer-assisted keyword searches of the North Dakota Century Code.

The bill status system and the bill drafting system were the core applications around which custom-built applications were based. During the early 1980s, applications were developed to automate various processes during the legislative session, e.g., the journal system provided for the journals to be prepared by legislative staff rather than a third-party printer, the calendar system provided for automated preparation of the daily calendars, the committee hearing system provided automated compilation of individual standing committee hearing schedules and display of those schedules on monitors throughout the legislative wing of the State Capitol, the conflicts system identified bills affecting the same Century Code sections, the chamber message system automated messages between the houses, the Session Laws and Session Laws index systems were used to publish the Session Laws, and the LAWS system, which retrieved information from the other applications, provided that information to legislators.

These legislative session applications are tightly integrated and are highly dependent on each other for data and information sharing. As the applications were enhanced over the years, the bill drafting and journal applications became the primary applications. The budget status system, although developed primarily for use during legislative sessions, is based on more modern technology and its interconnection with other session applications is limited--budget amendment information must be reentered into the bill drafting system for final amendment preparation and for transfer to the journal.

In addition to applications primarily used during legislative sessions, the Legislative Council staff also developed applications to publish the North Dakota Administrative Code; maintain, store, and retrieve office documents; maintain mailing lists; prepare vouchers keyed to legislative committee activities; maintain Legislative Assembly and Legislative Council inventory; track work projects; and inventory library resources.

Infrastructure Analysis

In 2003, $200,000 was appropriated for an infrastructure analysis. Techwise Solutions, Fargo, was hired as contract manager for the infrastructure analysis.

Techwise Solutions prepared a request for proposal (RFP) and sent the RFP to 30 consulting firms nationwide. Enterprise Solutions, Bismarck, was recommended by Techwise Solutions and selected from the respondents to the RFP.

Enterprise Solutions prepared an infrastructure analysis that documented the current applications environment, captured business and technical requirements, researched solutions implemented in other states, and researched solutions provided by vendors. The infrastructure analysis also provided a recommended solution and budget estimates.

The recommended solution was to purchase commercial off-the-shelf components (as applicable) that met standards of the Information Technology Department and integrated with other systems. This solution was viewed as a way to provide functionality and integration with other systems, but the major risks were seen as the difficulty in fitting all functionality into a single biennium and the possible need to obtain expertise from multiple vendors. The projected budget for replacing the applications was estimated at $3,550,000 for the 2005-07 biennium and $1,350,000 for the 2007-09 biennium.

2005-06 Activity

Funds

The Legislative Council requested an appropriation of $4,200,000 during the 2005-07 biennium to proceed with replacement of legislative applications. In lieu of appropriating the requested amount, however, the Legislative Assembly removed the entire appropriation for this project and instead authorized the Legislative Council to use unexpended funds from the appropriations to the Legislative Assembly and Legislative Council for the 2003-05 biennium. In August 2005 the amount determined as being available for the project was $1,523,037.

Project Plan

Senate Bill No. 2001 (2005), the appropriation bill for the legislative branch, required the Legislative Council staff and the Information Technology Department staff to develop a project plan, and required the Legislative Management Committee to review and adopt the project plan. The project plan was required to be developed in a phased approach.

Enterprise Solutions presented a project plan to the committee which included appointment of an executive steering group, development of an RFP, selection of a vendor, negotiation of a contract and statement of work that included deliverables and a schedule, and performance of the work. This process included performing an analysis that captured detailed business and technical requirements and increased the stakeholder involvement; creating a design that defined business processes, selected products, and developed an architectural prototype; developing a project plan that included a phased approach with milestones and deliverables; and implementing a solution, the extent of which would be determined primarily by funds available.

Steering Group

The Legislative Council chairman appointed an executive steering group consisting of three members of the Senate (Senators Randel Christmann, Ray Holmberg, and Tom Seymour), three members of the House (Representatives Matthew M. Klein, Bob Skarphol, and Eliot Glassheim), three representatives of the Information Technology Department (Curtis L. Wolfe, who was replaced by Lisa Feldner in 2006, Mike Ressler, and Nancy Walz), and four members of the Legislative Council staff (John D. Olsrud, Jay E. Buringrud, Jim W. Smith, and Maryann F. Trauger). The steering group's responsibilities involved monitoring project budget and implementation plan timelines, reviewing and monitoring a communication plan, reviewing milestone progress, and providing the escalation point for project issues.

Vendor Selection

The RFP for the legislative applications replacement project was distributed to over 100 firms and 5 responded--Arbortext, Ann Arbor, Michigan (Arbortext was acquired by Parametric Technology Corporation (PTC), Needham, Massachusetts, after the RFP was distributed); International Roll Call Corporation, Mechanicsville, Virginia; MSI Systems Integrators, Omaha, Nebraska; Object Partners, Inc., Minneapolis, Minnesota; and Propylon Ltd., Harrisburg, Pennsylvania. The steering group invited four of the five to make formal presentations to the steering group, and the steering group selected two--Arbortext and MSI Systems Integrators--to present their proposals to the Legislative Management Committee.

After receiving the proposals, the committee selected Arbortext/PTC as the consulting firm for the legislative applications replacement project. The proposal by Arbortext/PTC included partnering with Capstone Consulting, Omaha, Nebraska, due to Capstone's expertise in systems integration.

Phase I of the Project

As approved by the committee, the project plan involved two distinct phases. Under Phase I, PTC captured business requirements, i.e., what the Legislative Assembly and the Legislative Council do. Over 50 individuals, including legislators, Legislative Council staff, desk force personnel, and state agency representatives were interviewed. In addition, a survey was sent to all legislators and about one-half returned the surveys. The results were placed in a *Business Process Analysis* document. Based on the business process analysis, PTC prepared a *Functional Specifications* document, an *Architectural and System Schematics* document, a *Technical Specifications* document, and a *Proof of Concept* document. Once these were prepared, PTC completed the *Proposed Solution Budget for Phase II*, the *Cost Benefit Analysis Return on Investment (ROI)*, and the *Timeline (Phase II Implementation Plan)*.

The committee, under the charge to review and approve deliverables from each complete project phase before any consideration could be made for a

subsequent phase, approved these deliverables and approved proceeding with Phase II.

Phase II of the Project - Catalyst Initiative

The PTC proposal for Phase II included Stage 0 - Project Initiation (Phase II Catalyst Initiative), Stage I - Foundation, Stage II - Data Creation, Stage III - Integration, and Stage IV - Approval and Tracking. The Phase II timeline showed completion by October 2008.

Under Stage 0 - Project Initiation (Phase II Catalyst Initiative), the hardware and software identified under Phase I were installed in the Legislative Council office, a conference committee system was developed and used during the 2007 legislative session, and PTC met with and interviewed stakeholders during the 2007 legislative session to validate business processes PTC identified under Phase I.

2007-08 Interim - Phase II of the Project

The Legislative Assembly appropriated $3,910,827 to complete Phase II. In May 2007 PTC delivered the statement of work for Phase II. The statement of work was reviewed by the project manager and personnel from the Information Technology Department. Issues with the initial statement of work included lack of specific dates for deliverables during Phase II, a limit of two reviews of deliverables before acceptance, and whether delays caused by work required as a result of reviews would affect the schedule.

In June 2007 a revised statement of work was presented to the Legislative Council. The revised statement addressed the scope of the project, included a specific timeline over 16 months, added feature function sessions at the beginning of the delivery process to allow additional revision of deliverables, and added a third review before reaching the acceptance stage. The Legislative Council authorized proceeding with the statement of work with PTC.

Bill Format

The current bill drafting application is a mainframe-based application. The legislative applications replacement project envisioned XML-based products residing on servers. A feature of using XML as the editor allows various "style sheets" to be developed for viewing information obtained from the application, depending on whether information is viewed in HTML format or PDF format. Length of pages also could vary depending on paper size. The committee reviewed proposed formats for printed bills which increased page widths, reduced line spacing, reduced tab and indent spacing, reduced font size, and different font styles.

The committee approved the use of continuous line numbering in bills. The use of continuous line numbering throughout bills and resolutions will allow development of automated amendment preparation and bill engrossment as well as easier reference when viewing a bill on a computer screen in a format that does not separate pages.

Progress During the Interim

Phase II consisted of 14 application bundles with milestones within each bundle. The committee was informed in January 2008 of potential slippage in PTC meeting a number of milestones in the application bundles.

PTC demonstrated two "wow" factors being developed as part of the drafting application bundle. One was the generation of amendment language automatically by making changes to bills and having the system generate the amendment language. Another new feature was to show an amendment's effect of adding language (by shading the language green) and removing language (by shading the language red).

PTC revised the 45 deliverables and application bundles in February and proposed a new timeline. PTC delivered application bundle (AB) 1, which consisted of the North Dakota Century Code, Administrative Code, drafting manual, rules book, and some Lotus Notes databases involved in the migration to the new XML environment, on time. PTC built the components for AB2, which included the bill management console, work management console, electronic work request, content creation toolkit, content management workflow, and measure publishing, engrossing, and enrolling but experienced problems in the interface among the components. Preparations were being made for possible use of the current system during the 2009 legislative session. A relatively independent system, the conference committee scheduling system, developed by PTC during the 2007 legislative session could be used independent of whichever system is used in 2009.

By letter dated September 24, 2008, PTC gave the 30-day notice required under the Global Services Agreement to terminate without cause Phase II of the project.

Beginning with the 1997 legislative session, the Legislative Council staff has provided legislative information over the legislative branch webpage. During the 1997-98 interim, the North Dakota University System developed a subscription-based bill tracking service. As a result of the legislative applications replacement project including a bill tracking service, the University System decommissioned its bill tracking service after the 2007 legislative session. At its September 2008 meeting, the committee requested the University System to take any action necessary to bring the legislative bill tracking service back online in time for the 2009 legislative session.

LEGISLATORS' NOTEBOOK COMPUTERS

The chairman of the Legislative Council appointed a Legislator Computer Replacement Task Force consisting of 10 legislators to make recommendations concerning replacement of the notebook computers used by legislators, use of mobile communications devices (smartphones) by legislators, and use of technology in legislative committee rooms.

The task force received background information on the evolution of use of personal computers by legislators, the policy on legislator use of personal computers recommended by the Legislative

Management Committee and approved by the Legislative Council, and information from representatives of the Information Technology Department on use of smartphones, notebook computers, and tablet computers. The task force determined that notebook computers should be the type of computers provided to legislators. The task force received proposals from five vendors. Dell Marketing proposed the Dell Latitude D830 or the Dell Precision M6300. Fireside Office Solutions proposed the HP 6710b, the HP 8510p, or the HP 8710p. DakTech proposed the PlaidBook ST31V or the SR41V. High Plains Technology proposed Lenovo notebook computers. Best Buy for Business proposed the HP 8510p.

The task force determined that the notebook computers should provide for 17-inch screens, 4GB memory, a 7200 RPM hard drive speed, and an 802.11 a/b/g/n wireless standard, and cameras were not necessary. The task force recommended the HP 8710p notebook computer as proposed by Fireside Office Solutions.

The committee authorized the purchase of 177 HP 8710p notebook computers as recommended by the task force. This number provides for 141 notebooks for legislators, 5 notebooks as backup notebooks for legislators, 5 notebooks for use by leadership (one notebook in a leader's office and one on the floor), 10 notebooks for desk force personnel, 12 notebooks for legislative interns, 2 notebooks for assistants to the majority leaders, and 2 notebooks for use in the page rooms (for printing and cutting amendments for bill racks).

With respect to the disposition of the IBM ThinkPad A22m notebook-style computers currently used by legislators, NDCC Section 54-44-04.6 governs the disposition of property surplus to a state agency's needs. Section 54-44-04.6 would apply when the computers are declared surplus property.

The committee recommends that the IBM ThinkPad A22m notebook-style computers be returned to the Legislative Council office by the last day of the organizational session--December 3, 2008, and the computers be declared surplus and be delivered to Surplus Property for disposition under NDCC Section 54-44-04.6.

LEGISLATIVE INFORMATION SERVICES

Since 1990 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 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.

Bills, Resolutions, and Journals Subscription

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 2007 legislative session, 9 entities paid to pick up a set of bills and resolutions from the bill and journal room, 25 paid to pick up a set of bills and resolutions as introduced and as engrossed, 17 paid to pick up a set of journals, and 7 paid to receive the journal index.

The committee established the following fees with respect to these documents during the 2009 legislative session--$150 for a set of bills and resolutions as introduced and printed or reprinted, $290 if mailed; $260 for a set of bills and resolutions as introduced and printed or reprinted, including a set of all engrossed and reengrossed bills and resolutions, $485 if mailed; and $90 for a set of daily journals of the Senate and House, $230 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.

The committee continued the policy provided under Joint Rule 603 that anyone can receive no more than five copies of a limited number of bills and resolutions without charge.

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. One entity paid a $350 subscription fee to receive these reports from the bill and journal room during the 2007 legislative session.

The committee determined that printed bill status reports should continue to be made available through the bill and journal room only to those who subscribe to the 2009 bill status reports and pay a $350 subscription fee, $490 if mailed. The committee determined, however, that two copies of the bill status reports should be provided to the press room in the State Capitol without payment of subscription fees.

Committee Hearing Schedules and Daily Calendars Subscription

The committee continued 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 committee hearing schedules or daily calendars, the policy followed during the 2007 legislative session should continue and a fee should be imposed to cover the cost of mailing. The committee established a subscription fee of $40 for mailing a set of the weekly hearing schedules for Senate and House committees and a subscription fee of $70 for mailing a set of daily calendars of the Senate and House.

Bill and Journal Room Photocopy Policy

Under the contract for providing bill and journal room services, the contractor is to collect photocopying fees and transmit those fees to the Legislative Council office. Fees are not charged for providing a photocopy of a legislative document available for distribution to the public by personnel in the bill and journal room (bills, engrossed bills, journals, calendars, and committee hearing schedules) nor for providing a photocopy to a legislator, a House or Senate employee, or a Legislative Council employee. Under the policy, the fee for photocopying service is 25 cents per page.

CONTRACTS FOR PRINTING LEGISLATIVE DOCUMENTS

Background

Under NDCC Section 46-02-05, the Legislative Council is authorized to determine the contents of contracts for printing legislative bills, resolutions, and journals. The Central Services Division of the Office of Management and Budget 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 61st Legislative Assembly, the committee reduced the number of introduced bills and resolutions printed from 250 to 190 (based on the surplus of bills remaining after the 2007 legislative session), reduced the number of engrossed bills printed from 250 to 190 (based on the demand for these bills during the 2007 legislative session), and reduced the number of journals printed from 250 to 170 (based on the surplus of journals remaining after the 2007 legislative session). The reduction in the number of bills, resolutions, and journals printed also reflects committee discussion concerning whether to use a high-speed copier to print bills on demand rather than have preprinted materials. The intent is to reduce the number of preprinted bills to the level estimated for immediate distribution. If there is a need for additional copies, plans are to use a networked printer to make the additional copies, as was done in 2007.

The committee also approved setting the deadline for delivery of printed bills to the bill and journal room at 12:00 noon on the next legislative day after the day of introduction, rather than within 24 hours for bills not more than 16 pages and no later than 48 hours for bills 17 pages and over. This reflects the fact that the bill and journal room was printing a substantial number of bills that had not been delivered but were available on the legislative branch website.

SESSION ARRANGEMENTS

Floor Session Video Coverage

During the 2006-07 interim, the committee authorized the purchase and installation of two digital camcorders, two tripods, necessary wiring, and the equipment to provide simultaneous coverage of the Senate and House floor sessions. The video is streamed over the Internet. The camera operators were to be employees contracted through a third-party contractor.

During the 2007 legislative session, the camera operators worked limited and varying hours and eventually found other, more consistent work and the video cameras were operated by the Legislative Council tour guide and the Senate deputy sergeant-at-arms as time permitted.

The committee recommends that each house employ a half-time assistant sergeant-at-arms to operate the video cameras.

Incoming WATS Line Service

Beginning with the 1985 legislative session, incoming WATS lines have been provided for residents in the state to contact legislators or obtain information concerning legislative proposals. 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 discussed whether the policy restricting the messages to messages only for legislators from the caller's district or for legislators specifically named by the caller should be changed to allow callers to leave messages for any or all legislators.

The committee recommends continuation of the incoming WATS line telephone message service for the 61st Legislative Assembly. The WATS number will continue to be 1-888-ND-LEGIS (1-888-635-3447).

The committee recommends continuation of the policy that a caller may leave a message for the caller's local legislators (legislators from the caller's district and legislators of the city of the caller) and for specifically named legislators identified by the caller.

Legislator Wellness Program

North Dakota Century Code Section 54-52.1-14 requires the Public Employees Retirement System Board to develop an employer-based wellness program encouraging employers to adopt a board-approved wellness program. The incentive for adoption of a program is a 1 percent of health insurance premium charge to agencies that do not participate in the wellness program.

A wellness program must include the "mandatory activity" of communicating wellness materials provided by the Public Employees Retirement System and Blue Cross Blue Shield of North Dakota to individual employees on a monthly basis and promoting the Public Employees Retirement System smoking cessation program to employees. In addition to this mandatory activity, different "optional" activities must be developed each year.

The committee approved as a wellness activity for July 1, 2008, through June 30, 2009, a proposal by the North Dakota Medical Association and Altru Health

System to provide a personal wellness assessment program for legislators and the Legislative Council staff during the scheduled health fair in mid-January 2009 and other educational and wellness activities during the 2009 legislative session.

Legislator Expense Reimbursement Policy

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 $900 per month as reimbursement for lodging. The policy followed for the 60th 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 lodging expense reimbursement of two or more legislators sharing housing in a single dwelling was subject to approval by the Legislative Council chairman, in accordance with NDCC Section 54-03-20. The committee recommends the legislative expense reimbursement policy for the 61st Legislative Assembly be the same as that followed for the 60th Legislative Assembly.

Legislators' Supplies

Stationery

The committee approved continuation of the policy that every legislator be given the option of receiving 250 sheets of regular (8.5 inches by 11 inches) or Monarch (7.5 inches by 10.5 inches) stationery and envelopes, 250 sheets of each type of stationery and envelopes, or 500 sheets of either type of stationery and envelopes. A legislator can also request no stationery or envelopes. Additional options were added to allow legislators to elect to use an electronic letterhead and to elect to receive only envelopes. Under the policy, 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. With respect to newly elected legislators, the request form will be included in the information packets distributed to newly elected legislators during the organizational session. The committee continued use of a canvas-type carrying case first provided in 2002.

Capitol Access Cards

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 key to present near a reader that unlocks the door and records use of the card. Each security key 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 beginning with the 2003 session, a security card was provided to a legislator on request.

The committee approved continuation of the policy that a security card be provided to a legislator who requests one and signs a form acknowledging receipt of the card.

Legislator Photo Identification Cards

The committee approved providing a credit card-size photo identification card to each legislator as was done in 2007. The card will contain the 2009 legislative photo, a current signature of the legislator, the legislative session WATS line number (1-888-635-3447), the Legislative Council telephone number, and the Legislative Council WATS line number.

Legislator Photographs

The committee approved the invitation to bid for photography services to the 61st Legislative Assembly. Generally, the invitation to bid contained the same specifications as the contract for the 60th Legislative Assembly. With respect to the House, the specifications provide for two poses and two wallet-size color pictures of each pose of 97 individuals; color touchup of the final pose; one composite color picture approximately 50 inches by 60 inches, proofed, framed, and ready to hang; and 97 copies of the composite picture 11 inches by 14 inches in size. With respect to the Senate, the specifications provide for two poses and two wallet-size color pictures of each pose of 51 individuals; color touchup of the final pose; one composite color picture approximately 30 inches by 40 inches, proofed, framed, and ready to hang; and 51 copies of the composite picture 11 inches by 14 inches in size. The committee continued the option for oak frames for the small composite, available for purchase by individual legislators. The photographs of legislators are to be taken during the organizational session in 2008, 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 17, 2008, for use in updating the legislative branch website, and the photographer is to provide the digital image of the final pose to the Legislative Council by Friday, February 20, 2009.

The invitation to bid was sent to 51 photography firms in central and western North Dakota. Three firms submitted bids--Anderson Photography, Crosby, $3,700; Third Day Photography, Jamestown, $3,881.19; and Sterling Photography, Ridgeland, Mississippi, $104,000. The committee awarded the contract to the lowest

bidder--Anderson Photography--the firm that was also the photographer for the 54th through 60th Legislative Assemblies.

Legislator Computer Training

The committee approved the agenda for providing computer training to legislators before the convening of the 61st 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 with computer experience are scheduled for a two-hour class immediately after the organizational session adjourns Wednesday afternoon. New legislators with limited computer experience are scheduled for a two-hour class after the first class finished on 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.

During the organizational session, returning legislators can take 90-minute, concurrent miniclasses on e-mail and Microsoft Word. The miniclasses are scheduled for Monday morning and afternoon and Tuesday morning and afternoon.

Legislators can receive LAWS system training in any of three two and one-half-hour blocks of instruction on Monday, January 5, the day before the regular session convenes. A limited-attendance class is available Tuesday morning, the day the 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.

Personal Computer Use Policy

To ensure proper use of personal computers by legislators, the Legislative Management Committee approved the *Policy on Use of Personal Computers by Legislators* in November 2004. 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. The committee makes no recommendation regarding changing the personal use fee of $10 per month, first established during the 1997-98 interim, which allows legislators a personal use option under NDCC Section 54-03-26.

Journal Distribution Policy

The committee approved continuation of the 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 webpage, 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.

Session Employment Coordinators

The committee approved the hiring of one individual to represent each political party to receive and coordinate the handling of applications for legislative session employment.

Session Employee Positions

The committee reviewed the number of employee positions during the 2003, 2005, and 2007 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 36.5 Senate employee positions and 42.5 House employee positions during the 2009 legislative session. The plan:

- Recognized the four staff assistants authorized for the majority leaders and the four staff assistants authorized for the minority leaders.
- Recognized House employment of the payroll clerk (to continue the rotation of the position between the Senate and the House every session).
- Recognized continued Senate employment of the supply room coordinator (to make that employee available for providing assistant sergeant-at-arms services during the Senate floor sessions as needed).
- Recognized House employment of two one-half time assistant sergeant-at-arms (which was done in 2007).
- Recognized employment of a parking lot attendant by each house (which was done in 2005 and 2007).
- Proposed employment of an additional one-half time assistant sergeant-at-arms by the Senate and by the House for purposes of operating the video camera during floor sessions (rather than contracting for the camera operators).
- Proposed employment of one information kiosk attendant by the Senate and one by the House, rather than continuing to rotate one position between the houses and the House employing a one-half time attendant (for the purpose of being the initial contact for providing telephone message service rather than the private contractor).

The committee recommends that the Employment Committees provide for 36.5 Senate employee positions and 42.5 House employee positions.

Session Employee Compensation

The committee reviewed legislative session employee compensation levels during the 2007 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. This was primarily in recognition of the average pay increases of 2 percent and 3 percent approved by the 56th Legislative Assembly for state employees. In addition, a skills recognition adjustment ranging from an additional $2 to $11 per day for certain legislative session employees was provided 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. In 2005 a general increase of 5 percent, rounded to the nearest dollar, was provided. This was primarily in recognition of the difficulty in attracting qualified applicants for session employment. In 2007 a general increase of 8.16 percent, rounded to the nearest dollar, was provided. This was primarily in recognition of the increases of 4 percent and 4 percent (or a total of 8.16 percent) approved by the 59th Legislative Assembly for state employees. Increases in per day compensation for the Senate and House assistant committee clerks and the administrative assistant to the Speaker of the House also were provided.

The committee received information on the effect of providing a general increase of 8.16 percent, rounded to the nearest dollar, reflecting the increases of 4 percent and 4 percent approved by the 60th Legislative Assembly for state employees, which resulted in a pay range of $83 to $141 per day for session employees.

The committee also received information on what session employee compensation rates would be if compensation rates in 1999 were adjusted based on state employee salary increases, inflation, and state average weekly wage increases through 2008. If adjusted based on state employee salary increases, session employee compensation in 2009 would range from $80 to $132 per day. If adjusted for inflation, session employee compensation in 2009 would range from $82 to $135 per day. If adjusted based on state average weekly wage increases, session employee compensation would range from $89 to $146 per day.

The committee recommends daily compensation rates be increased to the level they would be if compensation increases since 1999 would have paralleled increases in the state's average weekly wage. Depending on the position, individual daily wage rates will experience increases from 11.8 percent to 15.6 percent.

As a result of this recommendation, compensation will range from $89 to $146 per day ($11.13 to $18.25 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 concurrent 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 kiosk 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.

Session Employee Orientation and Training

The committee approved the agenda for orientation and training of legislative session employees between November 13, 2008, and January 7, 2009, and authorized the Legislative Council staff to conduct training sessions for various session employees.

The training will be similar to that provided before the 2007 legislative session--the payroll clerk will receive training in mid-November; the journal reporters will receive training before the organizational session convenes, depending on the availability of the 2007 Senate Journal Reporter; committee clerks will not receive training on preparing amendments before the legislative session; and committee clerks will receive training on using the legislative branch website.

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 each employee's duties and the training required of the employee.

Secretarial, Telephone Message, and Bill and Journal Room Services

Secretarial Services

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. Beginning with the 1995 legislative session, the Senate and House have shared a part-time payroll clerk and the Legislative Assembly has contracted with a third party to provide secretarial services.

Telephone Message Services

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. Beginning with the 2001 legislative session, the Legislative Assembly contracted with a third party to provide telephone message services.

Bill and Journal Room Services

In 1995 the Legislative Assembly employed 12 bill and journal room clerks at a cost of $57,170.61. Beginning with the 1997 legislative session, the Legislative Assembly has contracted with a third party to provide bill and journal room services.

Consolidated Services

During the 1999-2000 interim, the Legislative Management Committee recommended that the separate contracts for secretarial services and telephone message services be awarded to the same contractor to take advantage of efficiencies obtained by moving employees from one area to the other as necessary.

As a result of experiences with the consolidated secretarial and telephone message services during the 2001 legislative session, the Legislative Management Committee recommended contracting with one service to provide secretarial, telephone message, and bill and journal room services. Beginning with the 2003 legislative session, these three services have been provided by one third-party contractor.

During the 2003 legislative session, 18 employees provided secretarial, telephone message, and bill and journal room services.

Since the first contract with a third party to provide services formerly provided by Legislative Assembly employees, the committee has reviewed workload so as to ensure appropriate levels of service.

In 2007 the contractor's employees completed 93 speeches (and made 631 copies), 42 press releases (284 copies), 13 charts and lists (254 copies), 410 letters (817 copies), 75 mail merges (5,442 copies), and 260 miscellaneous documents (558 copies). For comparison purposes, 154 speeches (598 copies), 106 press releases (358 copies), 29 charts (217 copies), 295 letters (643 copies), 49 faxes (162 copies), 65 mail merges (6,150 copies), and 6,300 miscellaneous documents (6,891 copies) were prepared in 2005.

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 2007 legislative session, 4,227 calls were received.

As a result of the decreasing number of documents prepared and the decreasing number of telephone calls received during recent legislative sessions, as well as recommendations of the third-party contractors to allow for cross-training of employees so they can be assigned among the areas as needed, the number of employees under contract to provide secretarial, telephone message, and bill and journal room services has gone down every session since 2003.

The committee approved an invitation to bid for services during the 2009 legislative session to provide six employees for secretarial, telephone message, and bill and journal room services. Three employees and the onsite supervisor are to be located in the secretarial and telephone message services area. All four are to be trained to provide secretarial and telephone message services. During the first three weeks of the legislative session, one or more of the employees are to be available to be assigned to assist the two employees in the bill and journal room area as workload requires.

The invitation to bid to provide secretarial, telephone message, and bill and journal room services was sent to eight temporary personnel services in the Bismarck-Mandan area. The committee received two bids. The daily bids were $570.08 by Kelly Services and $581.20 by Spherion. The hourly pay range in the Kelly Services bid is secretarial and telephone message services - $8.25 to $8.50; and bill and journal room services - $8.50.

The committee recommends accepting the bid by Kelly Services, Bismarck, to provide six employees for secretarial, telephone message, and bill and journal room services during the 2009 legislative session.

To ensure proper use of secretarial services, the committee reviewed and approved the *Policy Regarding Secretarial Services to Legislators* last approved by the Legislative Council in November 2006. 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 a majority leader or minority leader, as appropriate; and provides the procedure for any comment or complaint regarding the service. A copy of the policy is included in the legislators' information packets distributed during the organizational session.

Legislative Internship Program

Since 1969 the Legislative Assembly has sponsored a legislative internship program in cooperation with the School of Law and the 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.

The committee approved continuation of the program for the 61st Legislative Assembly--up to 11 intern positions (10 for committees and 1 for the Legislative Council staff as needed) allocated among participating entities as needed (10 have been allocated to the School of Law based on the need for law students to prepare amendments for committees)--and extended the program to four months. The committee also authorized an increase in the stipend to $2,000 per month for the four-month program.

Legislative Tour Guide Program

For the past 16 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 2009 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 2009 legislative session under the same arrangements as in the past. The association is planning to arrange health screening days to assist members of the Legislative Assembly in its wellness program.

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. The committee authorized the Legislative Council staff to invite the local ministerial associations to continue to schedule chaplains for opening prayers for both houses each day of the 2009 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, 2008, to schedule out-of-town clergy to give the opening prayer any day of the legislative session for their respective houses during the 2009 legislative session.

Organizational Session Agenda

The committee approved a tentative agenda for the 2008 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. As the result of amendment of NDCC Section 54-03.1-02 in 2005, the "default" day for convening the organizational session is the first Monday in December. The convening of the organizational session on Monday allows 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. allows 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.

Major changes from 2006 include elimination of computer training for legislators with respect to the Internet due to low attendance in 2006; elimination of the sexual harassment session because Joint Rule 901, relating to sexual harassment, is covered in the ethics session; elimination of the wellness program because a different wellness program will be provided during the 2009 legislative session; consolidation of the Legislative Council report by the chairman and the director; and reduction of new legislator computer training from six hours to two hours with the first session beginning at 12:00 noon on Wednesday and the second session beginning at 2:30 p.m. on Wednesday rather than any session on Thursday, primarily because of low attendance at the Thursday session in 2006.

State of the State Address

During the 2007 legislative session, the House and Senate convened in joint session at 1:15 p.m. on the first legislative day. Four 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, and one for the Governor and his spouse. The joint session was called to order at 1:30 p.m. and the Governor presented his State of the State address.

The committee authorized the Legislative Council staff to contact the Governor for presentation of the State of the State address on the first legislative day of the 2009 legislative session.

State of the Judiciary Address

The committee authorized the Legislative Council staff to make plans with the Chief Justice of the Supreme Court for the State of the Judiciary address to a joint session on the second legislative day of the 2009 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 2001 legislative sessions and has made an address to a joint session since 2003.

The committee authorized the Legislative Council staff to extend an invitation to representatives of the Indian tribes to make a presentation to the 61st 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 9, 2009--as the day for a joint hearing by the Senate and House Agriculture Committees to receive this report.

Agriculture Commissioner Report

The committee reviewed NDCC Section 4-35.2-04, which requires the Agriculture Commissioner to submit a biennial report to a joint meeting of the House and Senate Agriculture Committees on the status of the pesticide container disposal program. The committee determined the report should be made on the same day the committees receive the agricultural commodity promotion groups report--Friday, January 9, 2009.

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 12, 2009.

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.

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.

MISCELLANEOUS MATTERS

2010 Census Data Project

The United States Census Bureau is making preparations for the 2010 census. During the 2005-06 interim the committee approved Phase 1 of the Census Redistricting Data Program, which allowed state legislatures to identify current legislative district boundaries for the Census Bureau, which in turn will provide 2010 census information for those legislative districts.

The committee approved state participation in Phase 2 of the 2010 Census Redistricting Data Program. Phase 2 allows the state to identify precinct boundaries so the state will receive population and other information for precincts and other geographic areas to assist in redistricting efforts after the 2010 census.

Brass Refinishing of Ground Floor West Hallway and Doors

During the interim, copper alloy (brass) has been restored to its original finish on the ground and first floors. The committee received a proposal from the contractor to restore the copper alloy (brass) on the meeting room doors in the ground floor legislative main center hallway, the surfaces on the ledges of the bill and journal room and the coat room, and the west entrance doors from the parking lot.

After the proposal was presented to the committee, the Facility Management Division, Office of Management and Budget, contracted for the brass on the west end of the ground floor to be restored.

LONG-TERM CARE COMMITTEE

The Long-Term Care Committee was assigned the following responsibilities:

1. Section 3 of Senate Bill No. 2109 (2007) directed a study of the long-term care system in North Dakota, including capacity, geographical boundaries for determining capacity, the need for home and community-based services, a methodology to identify areas of the state needing additional nursing home beds, access, workforce, reimbursement, and payment incentives.
2. House Concurrent Resolution No. 3022 (2007) directed a study of the availability and future need for dementia-related services, as well as funding for programs for individuals with dementias.
3. Senate Concurrent Resolution No. 4005 (2007) directed a study of the feasibility and desirability of establishing a transition to independence program for young adults with mental illness.
4. The Legislative Council assigned the committee responsibility to receive, before August 1, 2008, the following reports from the State Department of Health:
   a. A report regarding the status of the demonstration project for voluntary surveys during major construction or renovation of basic care and long-term care facilities, pursuant to subdivision 4 of Section 12 of House Bill No. 1004 (2007).
   b. A report regarding the impact of implementation of a survey process for basic care facilities, pursuant to Section 2 of House Bill No. 1488 (2007).

Committee members were Senators Dick Dever (Chairman), Joan Heckaman, Aaron Krauter, Judy Lee, and Tim Mathern and Representatives Larry Bellew, Karen Karls, Gary Kreidt, Ralph Metcalf, Jon Nelson, Vonnie Pietsch, Louise Potter, Clara Sue Price, Gerry Uglem, Benjamin A. Vig, and Alon Wieland.

The committee submitted this report to the Legislative Council at the biennial meeting of the Council in November 2008. The Council accepted the report for submission to the 61st Legislative Assembly.

LONG-TERM CARE STUDY

Section 3 of Senate Bill No. 2109 (2007) directed a study of the long-term care system in North Dakota. The study was to include capacity, geographical boundaries for determining capacity, the need for home and community-based services, a methodology to identify areas of the state needing additional nursing home beds, access, workforce, reimbursement, and payment incentives.

Background Information

Previous Studies

The committee reviewed previous studies relating to long-term care, including studies by the 2001-02 Budget Committee on Human Services relating to the long-term care needs and nursing facility payment system in North Dakota; by the 1999-2000 Budget Committee on Health Care relating to the possibility of creating an incentive package to assist rural communities and nursing facilities significantly reduce bed capacity and provide alternative long-term care services; by the 1997-98 Budget Committee on Long-Term Care relating to a wide range of long-term care issues, including basic care rate equalization, Alzheimer's and related dementia population projects, American Indian long-term care needs, long-term care financing issues, and home and community-based services availability; and by the 1995-96 Budget Committee on Home and Community Care relating to the use of the state's resources and services in addressing the needs of elderly residents.

Real Choice Systems Change Grant

The committee learned in September 2004, the Department of Human Services received a $315,000 three-year Real Choice Systems Change federal grant to provide a single point of access to long-term support and care services for the elderly and individuals with disabilities. The Department of Human Services contracted with the North Dakota Center for Persons with Disabilities at Minot State University to conduct the project. The project, known as the Real Choice Systems Change Grant - Rebalancing Initiative, was to develop a plan for balancing funds between long-term care services and home and community-based services and a new system for providing a single point of entry for services for the elderly and individuals with disabilities. The initiative gathered and analyzed previously completed studies relating to North Dakota's continuum of care system and the goals resulting from the initiative included developing a system to provide a single point of entry for continuum of care services in North Dakota and a mechanism to balance state resources for continuum of care services to strengthen opportunities for choice and self-direction.

Health Care Trust Fund/Long-Term Care Facility Loan Fund

The committee received information on the health care trust fund, which was established by the 1999 Legislative Assembly (Senate Bill No. 2168) for providing nursing alternative loans or grants. House Bill No. 1196 (2001) provided that money in the fund may be transferred to the long-term care facility loan fund for nursing facility renovation projects and for other programs as authorized by the Legislative Assembly. Money was generated for the health care trust fund as a result of the Department of Human Services participating in a government nursing facility funding pool at two government nursing facilities--McVille and Dunseith. The federal funds were deposited in the health care trust fund where they are invested by the State Investment Board and any investment earnings are retained in the fund. The federal government subsequently eliminated this intergovernmental transfer program. North Dakota

received a total of $98.2 million under this program from 2000 to 2004. Of the total, $11.3 million was used for long-term care facility loans and the remainder for other programs and purposes. The fund has a projected June 30, 2009, fund balance of $2,019,842.

Under North Dakota Century Code (NDCC) Chapter 50-30, subject to legislative appropriations, money may be transferred from the health care trust fund to the long-term care facility loan fund for the purpose of making loans as approved by the Department of Human Services for renovation projects. Each loan is limited to $1 million or 90 percent of the project cost, whichever is less. Under the program, 22 loans have been approved totaling $11.3 million. As of June 2007, $9.7 million of outstanding loans remain. Of the approved loans, 1 was for an assisted living facility, 13 for nursing home facilities, 1 for a basic care facility, and 7 for combination nursing, assisted living, and basic care facilities.

Continuum of Care Services for the Elderly

The committee reviewed the following summary of the programs that comprise North Dakota's continuum of care for the elderly:

Nursing home care - Provides facility-based residential care to individuals who, because of impaired capacity for independent living, require 24-hour-a-day medical or nursing services and personal and social services.

Basic care - Provides facility-based residential care to individuals who, because of impaired capacity for independent living, require health, social, or personal care services but not 24-hour-a-day medical or nursing services.

Medicaid waiver for the aged and disabled - Provides in-home and community-based care to individuals who otherwise would require nursing home care and who are Medicaid-eligible. Services available include:

1. Adult day care.
2. Adult foster care.
3. Adult/traumatic brain-injured residential.
4. Chore services.
5. Emergency response system.
6. Environmental modification.
7. Case management.
8. Homemaker services.
9. Transportation (nonmedical).
10. Respite care.
11. Specialized equipment/supplies.
12. Supported employment.
13. Transitional care.
14. Nurse management.
15. Attendant care service.

Service payments for elderly and disabled (SPED) - Provides in-home and community-based care to individuals who are impaired in at least four activities of daily living (examples include toileting, transferring, eating, etc.) or at least five instrumental activities of daily living (examples include meal preparation, housework, laundry, medication assistance, etc.). Services available include:

1. Adult day care.
2. Adult foster care.
3. Chore services.
4. Emergency response system.
5. Environmental modification.
6. Family home care.
7. Case management.
8. Homemaker services.
9. Respite care.
10. Personal care.

Personal care services - Provides in-home care to individuals who are impaired in at least one activity of daily living (examples include toileting, transferring, eating, etc.) or in at least three of the four following instrumental activities of daily living--meal preparation, housework, laundry, and medication assistance. The individual must be Medicaid-eligible to receive personal care services. These services include assistance with bathing, dressing, toileting, transferring, eating, mobility, and incontinence care and also assistance with meal preparation, housework, laundry, and medication assistance.

Expanded SPED - Provides in-home and community-based care to individuals who are not severely impaired in activities of daily living (examples include toileting, transferring, eating, etc.) but who are impaired in at least three of the four following activities of daily living--meal preparation, housework, laundry, and medication assistance, or who have health, welfare, or safety needs, including requiring supervision or a structured environment. This program is an alternative to basic care. The individual must be Medicaid-eligible to receive services under this program. Services include:

1. Adult day care.
2. Adult foster care.
3. Chore services.
4. Emergency response system.
5. Environmental modification.
6. Family home care.
7. Case management.
8. Homemaker services.
9. Respite care.

Nursing Facility Payment System

The committee learned North Dakota's nursing facility payment system has been in place since 1990 and requires equalized rates, which means nursing facilities may not charge private pay residents a higher rate than individuals whose care is paid for through the Medicaid program. Nursing facilities may, however, charge higher rates for private occupancy rooms.

The North Dakota nursing facility payment system consists of 34 classifications. Classifications are based on the resident assessment instrument (minimum data set) required in all nursing facilities. The rates for each classification vary by facility based on each facility's historical costs. Residents in higher classifications pay more than residents in lower classifications at the same facility.

Facility rates change annually on January 1 and may change throughout the year due to audits or special circumstances. Revenue received by a facility changes throughout the year based on the classifications of the residents receiving services. Each resident is reviewed

within 14 days of admission or reentry from a hospital and every three months subsequently. A resident's classification may change only at the scheduled three-month interval or if hospitalization occurs. Private pay resident classification evaluations may be done more frequently than those individuals on Medicaid. The facility is required to give 30-day notice to its residents whenever the facility's rates change. If an individual's classification changes, no notice is required and the rate is retroactive to the effective date of the classification. The department's policy is that Medicaid pays for up to 15 leave days for each hospital admission.

Nursing Care and Basic Care Bed Moratorium

The committee learned Senate Bill No. 2109 (2007) continues through July 31, 2009, the moratorium on the expansion of nursing facility bed capacity above the state's gross licensed capacity of 6,383 beds. The provisions allow, not more than once in a 12-month period, a nursing facility to convert licensed nursing facility bed capacity to basic care bed capacity and a basic care facility to convert basic care bed capacity back to nursing facility bed capacity. The 2007 Legislative Assembly provided an exception to the moratorium on expansion of long-term care bed capacity and allowed the Veterans Home to convert 14 basic care beds to skilled care beds. The new Veterans Home facility will be authorized 52 skilled care beds and 98 basic care beds. Senate Bill No. 2109 also continues through July 31, 2009, the moratorium on basic care bed capacity. The bill provides that except for a nursing facility that is converting nursing facility bed capacity to basic care or unless the applicant demonstrates to the State Department of Health and the Department of Human Services that a need for additional basic care bed capacity exists, the department may not issue a license for additional basic care bed capacity above the state's gross licensed capacity of 1,527 beds.

North Dakota Century Code Section 23-16-01.1 allows nursing facilities to transfer beds from one facility to another, and Section 23-09.3-01.1 allows basic care facilities to transfer beds from one facility to another. Under both sections, the facility receiving the beds has 48 months in which to license the beds.

Capacity and Geographic Boundaries for Determining Capacity

The committee learned the average for nursing facility beds in North Dakota has been reduced from 89 beds per 1,000 elderly individuals in 1996 to 65.3 nursing facility beds per 1,000 elderly individuals in 2007. The national average is 49 nursing facility beds per 1,000 elderly individuals. Regarding basic care beds, the committee learned North Dakota has an average of 17.25 basic care beds per 1,000 elderly individuals in the state. The average occupancy percentage is 94 percent for nursing homes, 86 percent for basic care facilities, and 92 percent for assisted living facilities.

The committee learned the reduction in nursing home beds per 1,000 elderly individuals has occurred because of the moratorium in place, the 2001 state bed buyout program, and an increase in elderly population. The committee learned that demand for nursing facility beds is increasing in urban centers and decreasing in rural areas of North Dakota.

Nursing facilities are allowed to transfer or sell beds to other facilities. The demand for nursing home services is the greatest in Bismarck, Minot, Fargo, and Grand Forks. It is anticipated that by 2010, over 300 nursing facility beds and over 180 basic care beds will move from rural to urban North Dakota. The market price for a nursing facility bed in 2008 varies from $12,000 to $20,000. The cost of purchasing a bed is not an allowable cost for payment purposes. If the moratorium were allowed to expire, the committee learned that urban areas would experience unprecedented growth in the number of beds resulting in more Medicaid funds being spent for institutional care and available rural nursing home beds would have minimal value. The committee learned that other states with a high number of nursing home beds per 1,000 elderly individuals also have nursing home bed moratoriums. Of the 14 states that responded to a survey by the American Health Care Association, 4 states had a moratorium and a certificate of need process in place, 2 states had only a moratorium, 7 states had only a certificate of need process, and 1 state had neither a moratorium nor a certificate of need process.

The committee received information from the State Department of Health regarding the number of beds transferred between facilities and the conversion of beds from skilled care to basic care and from basic care to skilled care during the 2007-09 biennium. The number of licensed basic care beds increased from 1,515 in July 2007 to 1,592 as of May 15, 2008. The number of licensed skilled nursing facility beds decreased from 6,380 in July 2007 to 6,279 as of May 15, 2008, a reduction of 101 beds.

Home and Community-Based Services

The committee received a report from representatives of the Real Choice Systems Change Grant - Rebalancing Initiative project on home and community-based services in North Dakota. It is estimated that by 2020 the state will have an estimated 150,000 individuals over the age of 65 and 24,300 individuals over the age of 85. The committee reviewed the initiative's report, *At a Crossroad, North Dakota Home and Community Based Services - An Overview and Recommendations*, which contains information taken from surveys, data analysis, and discussion groups and includes the following recommendations:

1. Each individual needing long-term continuum of care services should receive adequate information to make informed decisions regarding how to access available services through the implementation of assessment and screening tools using a coordinated single point of entry or "no wrong door" process.
2. Increase medically needy income levels to at least match the amount received by individuals that receive supplemental security income and

permit more access to SPED funding for individuals who would otherwise have a high recipient liability through the Medicaid program.

3. Provide incentives to develop affordable, accessible housing with services for low- and moderate-income elderly and people with disabilities and housing subsidies for affordable, accessible housing with services to low- and moderate-income elderly and people with disabilities.
4. Maintain the necessary flexibility in long-term continuum of care programs and services to ensure that consumers receive the needed services to remain in their communities.
5. Provide additional ongoing funding in order to attract and retain an adequate number of qualified service providers (QSPs) to meet current and future needs.
6. Create a task force that will make recommendations on how best to encourage individuals and agencies to become QSPs by improving recruitment, retention, training, and recognition for this important group of providers.

The committee received information from the Department of Human Services regarding various services available within North Dakota's long-term care continuum, including information on eligibility criteria and service limits. As of May 2007, 1,411 individuals were being served in the SPED program, 114 individuals in expanded SPED, 249 individuals through home and community-based waiver services, and 594 individuals under the Medicaid personal care option.

The committee learned the Department of Human Services began serving individuals who are technology-dependent through a home and community-based waiver and that the Interagency Program for Assistive Technology provides assistive technology devices that allow residents to continue living at home. The committee also learned four new services, approved during the 2007 legislative session, were added to the home and community-based waiver, including family home care for spouses, home-delivered meals, nurse management, and adult foster care.

The committee learned that in May 2007 the Department of Human Services was awarded an $8.9 million federal grant for a money-follows-the-client demonstration project. The five-year initiative will assist 110 individuals, including 80 individuals currently in nursing homes and 30 individuals in developmental disability placements, to transition from an institutional setting to a home or community-based setting. It is anticipated 25 percent of all residents admitted to a nursing facility return to their own homes and one-third return home or to a lower level of care, such as basic care, assisted living, adult foster care, or to the home of a family member.

The committee received information on the Program of All-Inclusive Care for the Elderly. The program is a five-year project to help the poor who screen in need of nursing facility care to remain at home with day support, care, and services. Northland Healthcare Alliance is the recipient of the Program of All-Inclusive Care for the Elderly planning grant. The program has met the Department of Human Services' requirements and has been accepting participants. Participants must be at least 55 years old, live in a Program of All-Inclusive Care for the Elderly service area, and be certified as eligible for nursing home care by the appropriate state agency. An interdisciplinary team, consisting of professional and paraprofessional staff, assesses participants' needs, develops care plans, and delivers all services, including acute care services and, when necessary, nursing facility services. The first urban program will be in Bismarck and the first rural program will be in Dickinson. The Program of All-Inclusive Care for the Elderly could provide services anywhere in North Dakota as long as medical and nursing services, occupational therapy, physical therapy, and dietician services are available. Use of telemedicine could allow services to be available in underserved areas. The program does not limit the number of participants and it is estimated 5 percent of individuals over the age of 65 may meet eligibility requirements. It is estimated 550 individuals are eligible in Burleigh and Morton Counties and 150 are eligible in Stark County. The Program of All-Inclusive Care for the Elderly providers receive monthly Medicare and Medicaid capitation payments for each eligible enrollee and assume full financial risk for participants' care without limits on amount, duration, or scope of services.

The committee learned the North Dakota Senior Service Providers, representing the agencies that provide Older Americans Act services, such as home-delivered and congregate meals, health services, outreach, and legal assistance to persons aged 60 and older, served 30,804 different older adults statewide from October 2005 to September 2006. During the same period, providers delivered 521,481 meals to 6,195 older adults.

Identifying Areas of the State Needing Additional Nursing Home Beds

The committee received population projections to 2020 by age category and by human service region and compared the projected elderly population in North Dakota by location to capacity of services available in these locations. The committee received information from the Department of Human Services, the State Department of Health, and the North Dakota Long Term Care Association on the long-term care service capacity in North Dakota and the number of residents accessing those services in 2007 as well as information on the potential number of residents that may be accessing long-term care services in 2020. The following schedule summarizes information received by the committee regarding the number of facilities, beds, and QSPs providing services to residents and service recipients and the potential number of residents and recipients that may be receiving these services in 2020 based on the percentage of the population currently receiving services:

Region	Number of Facilities/ Providers 2007	Licensed Beds/Units 2007	Number of Residents/ Recipients 2006/2007	Potential Number of Residents/ Recipients 2020
Nursing home services				
Region 1	4	301	248	321
Region 2	10	813	822	1,145
Region 3	8	480	437	617
Region 4	11	829	761	1,035
Region 5	16	1,264	1,327	2,161
Region 6	12	999	1,033	1,446
Region 7	16	1,198	1,263	1,930
Region 8	6	496	467	634
Total	83	6,380	6,358	9,289
Basic care services				
Region 1	4	131	106	130
Region 2	6	227	181	237
Region 3	6	120	101	137
Region 4	4	150	122	160
Region 5	12	345	263	420
Region 6	8	225	195	253
Region 7	11	281	261	381
Region 8	5	95	88	113
Total	56	1,574	1,317	1,831
Assisted living services				
Region 1	3	71	66	81
Region 2	11	488	452	594
Region 3	4	112	104	141
Region 4	7	283	263	346
Region 5	12	597	554	884
Region 6	10	167	156	203
Region 7	6	204	189	275
Region 8	6	150	139	180
Total	59	2,072	1,923	2,704
Home and community-based services				
Region 1	83		72	83
Region 2	311		382	467
Region 3	346		307	391
Region 4	259		246	296
Region 5	291		539	804
Region 6	133		217	266
Region 7	284		416	565
Region 8	151		306	376
Total	1,858		2,485	3,248

The committee learned the Department of Human Services is in the process of developing an Aging 2020 project. The committee received information regarding an outline of the department's Aging 2020 project. The Aging 2020 project has two goals:

1. To identify, compile, and analyze past and current administrative data as well as census data to show the current status of programs administered by the state.
2. To produce comprehensive data documentation for state government policy and program professionals about the intergenerational dynamics of the emerging issues related to eligibility programs and services delivery.

The project will be completed in three phases over the course of three years and will coordinate with other departments and advisory groups, including the Department of Commerce, the State Department of Health, the Department of Transportation, the Olmstead Commission, and the Governor's Committee on Aging. A preliminary planning document is anticipated to be available in July 2010.

Access

The committee learned the Aging Services Division of the Department of Human Services has provided aging-related information and assistance for at least 20 years and has offered a nationwide toll-free number for approximately 15 years. Website and e-mail availability in recent years have enhanced access for consumers. The Aging Services Division has coordinated access to information with Mental Health America of North Dakota and with the FirstLink Hotline of Fargo.

The committee learned the Rural Assistance Center, at the University of North Dakota School of Medicine and Health Sciences Center for Rural Health is a federally funded initiative. In 2002 the Rural Task Force of the United States Department of Health and Human Services implemented a single coordinated point of contact for all Department of Health and Human Services programs that affect rural communities across the nation. Information is organized by state and the North Dakota page features links to specific tools available in North Dakota such as 2-1-1 North Dakota and the Aging and Disability Resource-LINK.

The committee learned in February 2004 the Public Service Commission designated Mental Health America of North Dakota as the 2-1-1 program in North Dakota. The 2-1-1 program is a confidential community information and crisis service available 24 hours a day 7 days a week. The 2-1-1 program contains a database of thousands of human service providers, programs, and community services and can assist local governments that do not have the funds to establish a comprehensive information and referral system.

The committee learned telemedicine began in 1995, funded by grants that provided for T-1 line connections to hospitals, clinics, and a few nursing homes. Later, homeland security grants were received to create a video-capable network connecting all the hospitals in the state that could be used during a disaster. This video-capable network could be used to conduct clinical consultations, education activities, and administrative meetings over the hospital connections, leaving funds available from the earlier grant to be used to connect to additional nursing home networks. Early telemedicine regulations did not include nursing homes as sites of service so residents had to be transported to a clinic or hospital for telemedicine appointments. A recently approved change in Medicare regulations identifies nursing homes as Medicare sites of service for telemedicine services beginning January 1, 2009.

The committee learned 2006 amendments to the federal Older Americans Act require the Assistant Secretary for Aging to implement aging and disability resource centers in all states. These centers are to:

1. Serve as visible and trusted sources of information on the full range of long-term care options.

2. Provide personalized and consumer-friendly assistance to empower individuals to make informed decisions about their care options.
3. Provide coordinated and streamlined access to all publicly supported long-term care options so consumers can obtain the care they need through a single intake, assessment, and eligibility determination process.
4. Help individuals plan ahead for their future long-term care needs.
5. Assist in understanding and accessing prescription drug and preventive health benefits.

Aging and disability resource centers have been established in 43 states. North Dakota is one of the seven remaining states without a center. The 2007 Legislative Assembly provided an appropriation of $840,000, of which $40,000 is from the general fund, for establishing a center in North Dakota if federal funds are available. The department has applied for a Real Choice Systems Change grant and an Aging and Disability Resource Center grant, which may provide up to $800,000 for establishment of a center with an anticipated 5 percent matching requirement.

Workforce

The committee learned staffing is a continuing challenge for long-term care facilities. Nursing facilities are experiencing difficulties recruiting and retaining staff, especially in rural areas.

The committee learned the North Dakota Medicaid Infrastructure Grant project included a survey of North Dakota individual and agency QSPs. Survey responses indicated the following:

- Less than 10 percent of QSP consumers are private pay.
- Time, travel, and reimbursement were most often noted as barriers preventing the QSP from providing additional requested services.
- Changes needed to allow QSPs to improve their services include less paperwork, increased reimbursement, access to health insurance and benefits, training, travel and mileage reimbursement, flexibility in services and time limits, more respite care, and more training opportunities.

The committee learned the North Dakota Association for Home Care recently surveyed its members and found that personal care services are being limited by many agencies as a result of the cost of travel to rural areas of the state. While the average reported cost to provide QSP services in 2008 is $27.75 per hour, the reimbursement payment is $19.64 per hour. Qualified service providers may charge private pay individuals a higher rate to subsidize the low reimbursement rate and at times will decline to provide services under the state program and instead choose to provide services to Medicare home health and hospice patients which provide a higher payment level.

The committee learned the North Dakota Nursing Education Consortium was established in 2007 pursuant to Senate Bill No. 2379 to address common concerns in nursing education which produce obstacles in meeting the state's current and future nursing needs, with a focus on the specific needs of rural communities. The consortium has developed the following action plan relating to the focus on nursing needs of rural communities:

1. Develop "grow-your-own" resources;
2. Develop additional rural clinical sites;
3. Enhance school nurse resources; and
4. Increase simulation laboratory availability for rural students.

Reimbursement and Payment Incentives

The committee reviewed reports from the Department of Human Services relating to the level of spending, utilization, and cost of long-term care services and programs for the 2005-07 and 2007-09 bienniums.

The committee learned the 2007 Legislative Assembly provided funding to:

1. Allow a 4 percent inflationary increase for the first year of the biennium and a 5 percent increase for the second year for all department service providers.
2. Rebase nursing home rates effective January 1, 2009.
3. Pay QSPs using a fee-for-service method based on 15-minute units of service.

The following schedule compares actual long-term care services utilization and spending for the 2005-07 biennium to appropriated amounts for the 2007-09 biennium:

2005-07 Biennium Actual Expenditures	Total	General	Other	Units
Nursing homes	$322,520,167	$110,618,033	$211,902,134	3,684
Basic care	12,057,997	4,833,310	7,224,687	452
Home and community-based services	29,986,904	15,837,627	14,149,277	
Developmental disabilities community-based care	214,341,903	73,024,306	141,317,597	
Total	$578,906,971	$204,313,276	$374,593,695	

2007-09 Biennium Appropriation	Total	General	Other	Units
Nursing homes	$371,475,215	$133,318,915	$238,156,300	3,494
Basic care	14,083,121	6,097,305	7,985,816	458
Home and community-based services[1]	39,798,605	21,954,683	17,843,922	
Developmental disabilities community-based care	274,423,470	95,952,600	178,470,870	
Total	$699,780,411	$257,323,503	$442,456,908	

[1]Includes appropriation for medical waiver for medically fragile children (Senate Bill No. 2326 (2007)).

The committee learned revised estimates of expenditures for nursing homes for the 2007-09 biennium are projected to total $355.2 million, approximately $16.3 million less than the appropriated amount of $371.5 million. Of the variance, $4.5 million is

from the general fund. Basic care costs are projected to be $14,500,000, $400,000 more than the appropriation of $14,100,000. Nursing home beds are projected to be 3,332, which is 162 less than budgeted, and basic care beds, projected to be 406, are 52 beds less than the 458 beds anticipated. Home and community-based services expenditures are projected to total $39,500,000, $300,000 less than the $39,800,000 appropriated.

The committee received information on nursing home facility-related costs compared to service-related costs. Direct costs include nursing and therapy; other direct costs include laundry, activities, and social services; and indirect costs include administration, chaplain, pharmacy, housekeeping, and medical records. As of June 2007 approximately 58 percent of the average daily costs related to direct costs, while approximately 25 percent related to indirect costs. The remaining 17 percent consisted of property, food, and other direct costs. The committee learned that the average daily per bed cost of a nursing facility has increased from $97.68 in 1998 to $165.59 in 2007. The current average daily per bed cost for basic care facilities and assisted living facilities in North Dakota is $78 and $100, respectively.

The committee also received a report containing information regarding Medicaid long-term care spending by state.

Other Testimony and Reports

Long-Term Care Insurance Partnership Program

The committee received information from the Insurance Department regarding the Long-Term Care Insurance Partnership Program, including the number of approved policies and sales. The committee learned the Long-Term Care Insurance Partnership Program authorized by Senate Bill No. 2124 (2007) provides that for long-term care insurance policies certified by the Insurance Department as meeting the consumer protection provisions of the 2003 Long-Term Care Insurance Model Act, benefit amounts paid under the insurance policy will increase the asset limit used in determining eligibility for Medicaid benefits. The Insurance Department has certified 17 companies offering 42 products as eligible for the Long-Term Care Insurance Partnership Program in North Dakota.

Notice of Transfer or Discharge

The committee learned before a nursing facility may transfer or discharge a resident, the facility must, as required by administrative rules, notify the resident and, if known, a family member or legal representative of the resident in writing and in language and in a manner they understand at least 30 days prior to the move. Basic care facility residents must also be provided with 30 days' notice of transfer or discharge, but the notice does not need to be in writing.

Legal Representation of Financially Exploited Elderly

The committee heard testimony regarding the possibility of the state appointing an attorney to represent elderly individuals who are being financially exploited by family members or others and on services currently provided by the Department of Human Services. Regarding the provision of legal services to elderly individuals, the department's Aging Services Division has contracted with Legal Services of North Dakota for over 25 years. The services provided under this contract are required under Title III of the Older Americans Act and are available to persons over age 60. The services are targeted to low-income, rural, minority, and socially isolated persons. Legal Services of North Dakota provides legal assistance to older individuals in the areas of abuse, age discrimination, defending guardianships, health care, housing, income, long-term care, neglect, nutrition, protective services, and utilities.

Vulnerable Adult Protective Services is a program within the Department of Human Services that works to prevent further abuse, neglect, or exploitation of vulnerable adults and promotes self-care and independence for vulnerable adults. North Dakota Century Code Section 50-25.2-03 authorizes the department to provide adult protective services if the vulnerable adult consents to and accepts the services. The department may also pursue other means to protect those that cannot give consent. The committee learned 10 percent of referrals to Vulnerable Adult Protective Services relate to financial exploitation.

The committee learned the Protection and Advocacy Project has been involved in financial exploitation cases for people with developmental disabilities and serious mental illness. The Protection and Advocacy Project reported it could expand its services by either:

1. Using additional resources to provide direct legal services to remedy exploitation for people who need long-term care but do not have developmental disabilities or mental illness;
2. Administering additional resources to contract with private attorneys to provide these services; or
3. Assisting another agency in developing this type of program.

North Dakota Health Information Technology Steering Committee

The committee learned the North Dakota Health Information Technology Steering Committee was created pursuant to House Bill No. 1021 (2007) to facilitate the adoption and use of health information technology and exchange to improve health care quality, patient safety, and overall efficiency of health care and public health services in North Dakota. The steering committee has completed a survey of all the hospitals in the state and is compiling the data. The steering committee is currently conducting surveys of the long-term care facilities, clinics, local public health units, and workforce in the state to determine the effects of using technology. Support for North Dakota health information technology projects has totaled $10.3 million over the past 10 years, including $1.1 million of nonfederal funds. The committee learned that lack of financial resources and well-trained information technology staff are common barriers to the adoption of health information technology in rural North Dakota facilities.

Olmstead Commission

The committee received information on the Olmstead Commission regarding outcomes of long-term care-related pilot projects, other activities and findings, and recommendations of the commission. The commission was involved in the following six pilot projects:

1. The Evangelical Lutheran Good Samaritan Society - Simplified Access to Services Model - $175,000 - This project was implemented in Arthur. The project involved developing informal and family support services to enable residents of the long-term care facility in Arthur to leave the building regularly to participate in community activities. The project also established a coordinating entity to assess needs and coordinate informal support systems to help people delay or avoid nursing home placement. This project is continuing. The project has resulted in the development of a one-stop resource center for community members as well as the provision of technical assistance, education, and support services.
2. Western Sunrise, Inc. - Living in Place Model - $55,000 - This project involved the creation of a system of domestic peer bridging and counseling for those with severe and persistent mental health issues throughout Region 1--Williston. The results of the project indicate consumers, families, and providers discussed service delivery and agreed that consumers need to be better-informed and more involved in discussions and decisions. This project is continuing and also is to be implemented in the north central human service region--Minot.
3. Knife River Care Center - Living in Place Model - $50,000 - This project focused on allowing residents to make more decisions regarding their care. The results indicated that residents had a greater satisfaction and interest in services and activities. This project is also continuing.
4. Independence, Inc. - Living in Place Model - $134,000 - This project created information awareness for persons with disabilities and their families. A brochure and brief video were produced and assisted persons with physical disabilities to become aware of assistive technology service options outside of institutionalization. This project resulted in consumers, family members, and local providers discovering service accessibility and availability strengths and barriers. Transportation remains a great barrier in rural areas for persons with disabilities.
5. Mental Health America of North Dakota - Services Model (2-1-1 Line) - $170,000 - This project implemented an information and referral service for all North Dakota citizens by making available the current 2-1-1 information line to persons with questions about service delivery for persons with disabilities. This project helped meet the rural communications need regarding services and service delivery of long-term care.
6. Indian Affairs Commission - Cultural Model - $85,000 - The first phase of this project included focus groups on each of the reservations and Indian service areas in partnership with the Native American Training Institute to identify gaps in service delivery. Although services exist, this project determined that many American Indians are not aware of them.

The committee learned the commission will continue to monitor the pilot projects.

Recommendations

The committee recommends Senate Bill No. 2044 to extend the moratorium on the state's licensed basic care beds and the state's licensed nursing facility beds from July 31, 2009, to July 31, 2013.

The committee recommends Senate Bill No. 2045 to require at least a 30-day written advance notice of any transfer or discharge from a nursing home, swing-bed hospital, basic care, or assisted living facility.

DEMENTIA-RELATED SERVICES STUDY

House Concurrent Resolution No. 3022 (2007) directed a study of the availability of and future need for dementia-related services, as well as funding for programs for individuals with dementias.

Background Information

Previous Studies

The committee learned the 1995-96 Budget Committee on Home and Community Care studied the continuum of care for North Dakotans with Alzheimer's and related dementias and the needs of caregivers and families of patients with Alzheimer's and related dementias. The committee recommended House Bill No. 1037, which required the Department of Human Services to establish pilot projects to meet the service needs of the Alzheimer's and related dementia population.

The 1997-98 Budget Committee on Long-Term Care monitored the implementation of the Alzheimer's and related dementia population projects. Due to delays in the startup of the pilot projects, it was not possible to fully evaluate the effectiveness of the pilot projects during the 1997-99 biennium. The committee recommended Senate Bill No. 2034, which authorized the Department of Human Services to continue the approved Alzheimer's and related dementia population pilot projects into the 1999-2001 biennium and required the department to monitor and report on the progress of the pilot projects.

The 1999-2000 interim Budget Committee on Institutional Services received the final report from the Department of Human Services on the progress of the Alzheimer's and related dementia pilot projects. The committee learned that, based on the department's review of the Baptist Home in Kenmare and with the approval of three additional units, the Alzheimer's and related dementia pilot project accomplished the goal set forth in the original legislation. The report indicates the

facility in Kenmare provided appropriate and adequate care to its residents with Alzheimer's and related dementias. The payment rate was $15.05 per day less than the services of a similar nature in a nursing facility.

Issues Relating to Dementia

The committee learned, according to national estimates, North Dakota has 16,000 individuals diagnosed with dementia, including Alzheimer's, which is the most common form of dementia. By 2010 the number is expected to increase to 18,000. Approximately 10 percent of individuals diagnosed with Alzheimer's have early onset of the disease which is before age 65. The committee learned that about 50 percent of nursing home residents have some type of dementia. Thirty percent of the victims of abuse, neglect, self-neglect, and exploitation assisted by adult protective services have dementia.

The committee learned that in 2000 Medicare spent nearly three times as much, on average, for people with Alzheimer's and other dementias as for beneficiaries without dementias. Estimated nursing home and other costs for Alzheimer's and dementia patients for calendar year 2007 totaled $104 million in North Dakota.

The committee learned 70 percent of individuals with Alzheimer's and other dementias live at home where they are cared for by family and friends. Information on caregivers and the economic value of caregiving by state in 2006 indicated the total annual economic value of caregivers in North Dakota was estimated at $550 million and nationally it was $350 billion.

The committee learned county social services are often unable to provide assistance to individuals with dementia because they exceed certain income levels or are below certain age requirements. In addition, some individuals choose not to seek assistance because of the perceived stigma attached to the disease.

The committee learned the primary reasons individuals with dementia enter skilled nursing facilities are caregiver exhaustion and lack of resources.

Dementia Services Available

The committee learned the Department of Human Services, in 2004, received a three-year federal Alzheimer's demonstration grant. The grant, $261,150 for each year, was to expand the availability of diagnostic and support services for persons with Alzheimer's, their families, and caregivers as well as to improve the responsiveness of the home and community-based care system for persons with dementia. The Department of Human Services contracted with the Alzheimer's Association Minnesota-North Dakota Chapter; MeritCare Medical Group, Fargo; and St. Alexius Medical Center, Bismarck, to conduct the Alzheimer's demonstration grant and provide community education, dementia awareness training, family caregiver training, educational workshops, sessions at major state conferences, public information, memory loss screening clinics, Alzheimer's support groups, training and presentations for medical staff, focus groups for caregivers, and a symposium on dementia and management. In addition, Lake Region State College developed an informational manual for training for family caregivers who are caring for someone with Alzheimer's or related dementias.

The committee learned the following services are available for individuals with dementia:

1. Skilled nursing facilities - Some facilities have designated memory care units; however, the number is not adequate.
2. Assisted living/basic care facilities.
3. In-home care providers.
4. Adult day care programs.
5. Adult foster care.
6. Medical professionals.
7. Support groups.
8. Care consultation/geriatric case managers.

Skilled Nursing Facilities

The committee learned every nursing facility in North Dakota provides care and services to individuals with dementia. Of the 83 licensed nursing facilities, 25 have special care units for those who have a diagnosis of Alzheimer's or a related dementia. Special care units have a restricting device to keep residents with a dementia diagnosis in a specific area and to separate them from the residents in the remainder of the facility. As of May 2008 nursing facilities with special care units provided 456 beds and had a 94 percent occupancy rate from January through April 2008.

Assisted Living/Basic Care Facilities

The committee learned that of the 59 licensed basic care facilities, 10 have special care units for individuals with Alzheimer's or a related dementia. As of May 2008 the basic care facilities with special care units provided 238 beds and had an 86 percent occupancy rate from January through April 2008. A limited number of facilities offer adult day care or respite care. The committee learned that few state or federal regulations relate to the creation and operation of specialized memory care units.

In-Home Care Providers/Adult Day Care Programs/Adult Foster Care/Medical Professionals/Support Groups/Care Consultation

The committee learned in January 2002 the North Dakota Family Caregivers Support Program, provided for under the Older Americans Act, began offering support and services to individuals who are caring for someone in their home or community. There are no income eligibility limits in order to receive services, and services are provided at no cost to the caregiver. The program targets individuals who are lower income, socially isolated, and living in rural areas. From July 2006 through June 2007 the North Dakota Family Caregivers Support Program provided services to 272 family caregivers. Of the total, 141 family caregivers were caring for an individual with Alzheimer's or a related dementia.

The Department of Human Services provides other services for eligible individuals with dementias and their caregivers, including case management, personal care,

home-delivered meals, homemaker services, outreach, and respite care.

The committee learned counties provide home and community-based services, including:

- Case management;
- Personal care services;
- Adult day care;
- Adult family foster care; and
- Respite care.

In 47 of 53 counties, county social services are serving 316 individuals who have a diagnosis of Alzheimer's or dementia and 345 individuals with a significant memory loss.

The committee learned the Interagency Program for Assistive Technology provides assistive technology devices, which include wandering alerts, automated medication dispensers, Alert One telephone services, car battery interrupters, walkie-talkies, and invisible cabinet locks. These devices allow individuals with Alzheimer's and related dementias to remain in their homes longer, be safer, and reduce the burden of caregiving.

Suggested Changes

The committee learned it is difficult to access dementia-related services for individuals under the age of 60 and assistance with legal-related services is generally available to older individuals but may not be available to those under age 65.

The committee learned several states are considering dementia-related legislation and some have developed state dementia plans.

The committee heard testimony from the Department of Human Services, Alzheimer's Association Minnesota-North Dakota Chapter, Burleigh County Home and Community-Based Services, AARP North Dakota, and individual caregivers regarding suggestions for improving dementia care services. Suggestions included providing the following:

1. More in-home support services for individuals with early onset Alzheimer's.
2. Access to senior meals programs for individuals under the age of 60 who have Alzheimer's and their caregivers.
3. Additional funding for new facilities and for upgrading existing facilities to care for individuals with dementia.
4. Additional training and support for caregivers.
5. Training for early detection by health care professionals and training standards for all staff involved with caring for individuals with dementia, including QSPs.
6. Financial, legal, housing, and life planning assistance.
7. More adult family foster care and day care services.
8. Medication certification for in-home care providers.
9. Nonmedical transportation to those who qualify for SPED and expanded SPED.
10. Expanded memory loss clinics.
11. A single point of entry to long-term care in North Dakota.
12. A coordinated care planning system to assist individuals in accessing services because a family's needs change as the disease progresses.
13. Easier access to funding for coordinated care planning on an ongoing basis.
14. Expanded family caregiver program services.
15. A statewide dementia coordinator position to develop and implement a coordinated care planning system.

The committee heard testimony expressing support for creating a statewide dementia coordinator position and extended care coordination from representatives of the Alzheimer's Association Minnesota-North Dakota Chapter, the Protection and Advocacy Project, and primary caregivers. The committee learned a 19-year study of the benefits of intervention and support showed nursing home placement was delayed 18 months for couples receiving care coordination and support. The 18-month delay could result in public and private health care cost-savings and improved physical and psychological health of the family caregiver.

Recommendations

The committee recommends House Bill No. 1043 that:

- Directs the Department of Human Services to contract for a dementia care services program in each area of the state served by a regional human service center to provide personalized care consultation services, training, and education regarding dementia;
- Provides for a $1.2 million general fund appropriation for the program; and
- Provides for a report to the Legislative Council regarding the outcomes of the program.

TRANSITION TO INDEPENDENCE PROGRAM STUDY

Senate Concurrent Resolution No. 4005 (2007) directed a study of the feasibility and desirability of establishing a transition to independence program for young adults with mental illness.

Previous Studies

The committee learned the 2003-04 Budget Committee on Government Services studied the needs of individuals with mental illness, drug and alcohol addictions, and physical and developmental disabilities, including individuals with multiple needs and how the state responds to those needs. The 2003-04 Budget Committee on Government Services reviewed information regarding a community-based system of care for persons with mental illness and substance abuse disorders.

Service Needs of Transition-Aged Youth

The committee learned severe emotional disturbances is the term used to identify children under

the age of 18 who have been diagnosed with a severe behavioral, emotional, or mental health disorder that has been a major impairment in a child's level of functioning at home, school, or community for at least one year. The committee learned that in 2006 the number of students with severe emotional disturbances meeting the criteria of emotional disturbance in North Dakota schools aged 16 to 21 was 318 and aged 3 to 15 was 769.

The committee learned it is common to find youth with mental illness in the foster care or juvenile justice systems, and in 2006 the public mental health system provided services to 1,538 children and adolescents with serious emotional disturbances and 1,527 children and adolescents with emotional disturbances.

The committee learned of the 886 young adults with serious emotional disturbances who turned 18 years of age during the 2005-07 biennium, 33 percent continued to receive services at a regional human service center. It is not known if the remaining 67 percent continued to access services in the private mental health system or decided to discontinue services.

Statistics indicate that youth with mental illness reenter the corrections system at a higher rate than other youth. Youth with serious emotional disturbances are able to manage themselves within the high level of structure provided by correctional case management and correctional placement; however, once these services are no longer a part of their daily lives, some youth are not able to sustain their behavioral gains. The committee learned that these youth would benefit from intensive case management services that would continue further into their lives; however, the program would require a continuum of services to develop and support adequate treatment plans for these youth.

The committee learned the Department of Human Services has a state review team to address situations with extreme challenges to use the collective expertise and resources of multiple divisions and agencies to solve service challenges, but often the barriers are funding and levels of care. Most youth considered by this team are involved in the foster care or juvenile justice systems, have developmental disabilities, or are cognitively lower functioning and have mental health or substance abuse issues. The state does not have a multiagency transition program specifically for youth with mental illness.

The committee learned services are available for individuals with developmental disabilities or if the youth are in the foster care system; however, for youth that are not in these programs services are limited.

The committee learned there is confusion and lack of awareness primarily in the following three areas, especially for young adults between the ages of 18 and 21:

1. Identifying the youth and young adults who are at risk of homelessness, incarceration, substance abuse, suicide, dropping out of school, etc.
2. Developing a continuum of service plan specifically for transitioning youth with mental illness that addresses their medical condition and its relationship to their educational focus.
3. Providing services to youth prior to crisis or after hospitalization before returning to the family home.

The committee learned a study, involving University of Mary graduate students, to identify youth at risk identified approximately 13,000 youth in 2005 and 2006 who have been involved in the judicial system. By identifying youth involved in the judicial system, who also have a mental health diagnosis, services can be better structured. However, more detailed information on these youth has not been collected due to lack of funding and an inability to access additional information on these individuals.

The committee learned most psychiatric illnesses have their visible beginnings in childhood or adolescence and the suicide rate among age groups 10 to 19 and 20 to 24 per 100,000 in North Dakota generally exceeds the national rate. Nationally, over 60 percent of young adults with a serious mental illness are unable to complete high school. These adults are often unemployed, unable to participate in continuing education, and lack the skills necessary for establishing and maintaining supportive relationships and independent living. Transition-aged youth with serious mental illness have higher rates of substance abuse and enter adulthood three times more likely to be involved in criminal activity than those without an illness.

The committee learned the Chief Justice of the North Dakota Supreme Court convened a multidisciplinary group to discuss child welfare issues in North Dakota. Recommendations included transitional services when children return home or are aging out of foster care. The recommendation is that the Department of Human Services should support efforts to use federal IV-E funds for transitional services when children return home.

The committee learned the Department of Human Services has conducted statewide stakeholder meetings to discuss the strengths, needs, and gaps in transition services for young adults. Concerns expressed include housing, employment opportunities, resources, complexity of diagnoses, independence, and decisionmaking.

Current State Agency Programs Serving Youth

Department of Human Services

The committee received information on selected Department of Human Services programs benefiting transition-aged youth, including:

Vocational rehabilitation services - Vocational rehabilitation services are provided to youth with severe emotional disturbances by the Department of Human Services. Eligibility requirements for vocational rehabilitation services include:

1. A physical or mental impairment that has been documented by a professional.
2. The impairment results in an impediment to employment.
3. The individual requires vocational rehabilitation services to prepare for, enter into, engage in, or retain employment.

Vocational rehabilitation services generally begin at the age of 16; however, students may begin receiving

services as young as the age of 14 if complex factors are involved. The program seeks to have an individual plan for employment in place by the time the student graduates high school.

The committee received information from the Department of Human Services regarding the development of plans to improve the coordination and collaboration of children's transitional services in the state. The Vocational Rehabilitation Division has allocated funding for regional transition projects. The projects were offered to all schools, including 34 special education districts and all eight regional transition committees. The projects are to focus on students entering their senior year who were eligible for or referred to the Vocational Rehabilitation Division.

Foster care independent living program - The committee learned the Department of Human Services, under the Children and Family Services Division, administers the foster care independent living program for youth transitioning out of foster care. The program is the Chafee foster care independent living program. The program's purpose is to ensure that all youth aging out of the foster care system have the necessary support and services available to them to assist in making the transition from foster care to adulthood. The goal of the program is for all foster youth to reach the following outcomes by the age of 21:

1. Access to physical and mental health services.
2. Sufficient economic resources.
3. Safe and stable living arrangement.
4. Academic/educational/vocational goal attainment.
5. Connections to persons and community.
6. Avoidance of illegal or high-risk behaviors.
7. Postponement of parenthood.

The program serves foster care youth aged 16 and older who have been identified as likely to age out of foster care as well as former foster care youth up to the age of 23 who have aged out of foster care. The independent living program served 284 youth during the last federal fiscal year.

The program receives $500,000 per year in federal Chafee grant funds requiring a 20 percent state match that is provided from the state general fund and eligible in-kind matching. The funding is used for regional independent living coordinator positions; direct financial assistance to youth for rent, utilities, food, clothes, etc.; youth groups; teen conferences; and program-related materials, equipment, supplies, etc.

The Department of Human Services also administers the federal Chafee education and training voucher program. This program provides funding to pay for the tuition, books, and room and board expenses of foster care youth to attend higher education institutions. This program receives $115,000 per year in federal funds requiring a 20 percent state match. Approximately 31 foster care youth are served by this program each year.

The Department of Human Services' Mental Health and Substance Abuse Services Division provides therapeutic and support services to children with severe emotional disturbances and their families. Examples of these services include individual, family, and group therapy; psychiatric services; psychological evaluations; care coordination; case aides; medication management; and residential and crisis services. The department contracts with private providers for some of these services while others are provided directly at the human service centers.

Department of Public Instruction

The committee learned the federal Individuals With Disabilities Education Act requires that transition services be incorporated into each child's individualized education program plan no later than the first plan in effect by the time the student turns 16 years old. The individualized education program plan must include the transition services needed to assist the student in reaching the student's postsecondary goals. The Act requires involvement of multiple agencies and the coordination of services. The school must ensure participation of any agency that is likely to be responsible for providing or paying for transition services by inviting the participating agency to the individualized education program meeting.

Department of Corrections and Rehabilitation

The committee learned transitional services are provided to youth who are at the Youth Correctional Center as well as in the custody of the Division of Juvenile Services. All case management provided to these youth is community-centered and involves other agencies and service providers. The center's role in planning for transition is to help youth develop the behavioral self-control necessary to reenter the community and remediate educational deficiencies. Juvenile corrections specialists provide wraparound case management services to ensure a case plan is in place when custody ends. The plan may include ongoing services for mental health, chemical health, or physical health services. Each case plan addresses living, work, and school arrangements.

Department of Career and Technical Education

The committee learned the Department of Career and Technical Education provides some services to assist students who are receiving special education services. The level of service varies by school district across the state. The department uses a referral process to get additional assistance for these students and does not provide the services directly.

Collaborative Efforts

The State Transition Steering Council includes members from each region of the state and from education, independent living, Job Service North Dakota, vocational rehabilitation, consumers, etc. Efforts have been made to establish regional interagency transition teams to identify and work on local issues. The level of progress of establishing these teams varies among the regions of the state. The Department of Human Services has allocated $400,000 of its biennial vocational rehabilitation budget for regional transition projects.

The committee learned the Department of Human Services has cooperated with the Department of Public Instruction and other partners to develop the Transition Community of Practice Advisory Council. The department will be providing technical assistance to each of the eight regions. A Youth Advisory Council has been established, and a Youth Leadership Forum in the summer of 2009 will provide training for 20 youth with disabilities to better advocate for themselves. Strategies of the North Dakota Transition Program include interagency collaboration, professional development and technical assistance, and family training and empowerment. The Youth Advisory Council will advise the Department of Human Services, Mental Health and Substance Abuse Services Division, and other system partners on issues of concern to North Dakota's youth, including underage drinking, transition to adulthood, and overall health and well-being. Suicide prevention and substance abuse prevention were the two most important issues identified by the council. The department received a $20,000 grant from the federal Substance Abuse and Mental Health Services Administration Center for Mental Health Services which it will use to establish a transition flex fund to assist youth aged 17 to 21 with expenses related to transition to adulthood and to supplement other sources of financial support for one-time requests for items, including clothing, food, rent deposits, and rent. A portion of the funding will also be used to reimburse youth and a parent or guardian to attend the council meetings.

The committee learned ND Youth, an advisory group of youth who are or have been in foster care, is working on educating others about foster care, dispelling myths related to youth in foster care, and helping to mentor each other. The group is developing a website to serve as a resource to all youth who are transitioning into adulthood and will include links to numerous transitioning resources.

Private Programs

The committee received information regarding the in-home counseling program provided by The Village Family Service Center, Fargo. The center's intensive in-home family counseling therapy program focuses on providing services to families within the family setting and the program's success rate is up to 85 percent. Because services are limited in time and very intensive, some counselors are involved with as few as three families. The program challenges families to become responsible and to address issues affecting their children.

The committee received information from Youthworks, Bismarck and Fargo, an alternative to the formal human services delivery system that provides services on a voluntary basis regardless of ability to pay or other limiting eligibility requirements. Youthworks focuses on runaway, homeless, and at-risk youth and their families.

The committee learned the Anne Carlsen Center for Children plans to establish satellite offices across North Dakota over the next three years. The satellite offices will provide therapy sessions, team meetings, and individual and group training and allow parents to keep their children closer to home. The average annual cost for the direct support at 16 hours per week is approximately $18,000 compared to $180,000 for the cost of institutional care. Children benefit from individual services and integration of these services into the community as they make the transition from youth to adulthood.

The committee received information on a skill enhancement training program and an anticipated pilot project, currently titled the Circle of Trust, both established by Fraser, Ltd., Fargo. The skill enhancement training program was established in 2004 to assist youth in developing the life skills necessary to become responsible adults. The program will be implemented to meet additional needs and as a complement to the skill enhancement training summer program. The committee heard testimony from Fraser, Ltd., regarding the Circle of Trust project, which is community-based and allows for individual communities to build services to meet needs. The project will be a partnership between Youthworks and Fraser, Ltd., allowing for more efficient use of space and resources. The project will build an alliance between community organizations and businesses to meet the needs of youth and young adults aged 12 to 21 and provide a seamless continuum of services with a focus on prevention programs, therapies, peer support, mentoring, independent living skill development, outreach to youth at risk, social skill activities, and service coordination. The project anticipates an annual budget of approximately $450,000, of which $225,000 may be requested from state funds.

Suggested Program Enhancements to Serve Transition-Aged Youth

The committee received testimony from the North Dakota Federation of Families for Children's Mental Health, Fraser, Ltd., Youthworks, and parents of youth with learning disabilities, and the following enhancements were suggested:

1. Better coordinating transition planning involving agencies currently serving the youth and agencies that will be providing services in the future to ensure a seamless transition for the youth into adulthood.
2. Providing more education regarding transition needs.
3. Involving youth and their families to a greater extent in developing the policy regarding transition services.
4. Focusing resources on family-based care.
5. Implementing national and state model programs to provide a service continuum to assist youth transitioning to independence.
6. Collecting data to assist in identifying youth at risk of not receiving services, where service continuums are not adequate, what existing programs could be enhanced, and what additional transition services or programs are necessary.

7. Changing eligibility requirements to correct gaps in access to needed services.
8. Providing additional education, support, and independent living training for youth transitioning out of the child welfare system.
9. Offering more meaningful school-to-work experiences.
10. Increasing the collaboration between special education and vocational rehabilitation to serve students with learning disabilities, emotional disturbances, autism spectrum disorders, and other health impairments.
11. Increasing case management services, supportive services, and housing services for youth transitioning to adulthood.
12. Establishing a state health insurance plan to cover youth with disabilities after graduating from high school.
13. Offering programs to assist youth to identify the types of jobs available to them and required skills.
14. Expanding independent living training.
15. Adding transition-aged youth to the wraparound services currently available through county social services.
16. Lowering the starting age for services. Currently the typical transition age is from 16 to 21.
17. Adding more crisis or safe beds for at-risk youth.

The committee learned a study completed by the North Dakota Center for Persons with Disabilities concluded the following needs exist to better serve youth transiting to adulthood:

1. Services to families' homes;
2. In-home support to families;
3. Personal and community support; and
4. Alternative living supports.

The committee received information on other states' transitional services programs for youth with mental illness. The four primary components used to develop these programs are:

1. Youth and family voices.
2. Specialized care management.
3. Natural supports within the community.
4. Interagency partnerships.

The committee learned the most successful of these programs stress the effectiveness of collaboration and forming partnerships to coordinate services for youth as they transition to adulthood. The transition to independence model identifies seven key principles for transitioning youth, including:

1. Engage youth.
2. Tailor services.
3. Respect youth independence.
4. Ensure a safety net of support.
5. Strengthen competencies.
6. Help maintain focus on outcomes.
7. Involve young people, parents, and other community partners.

The committee learned that other key components of successful programs for youth transitioning to adulthood include:

1. Residential programs.
2. Peer mentoring.
3. Employment opportunities.
4. Outreach activities.

The committee heard testimony supporting the wraparound process of providing services because it meets the need for coordination and collaboration between the various system providers. The wraparound process is a planning process that brings together a team of people from the youth's and the family's life. A facilitator assists the youth and family team in coordinating the supports necessary to meet the unique needs of the youth and family.

Recommendations

The committee recommends House Bill No. 1044 that directs the Department of Human Services to develop or contract for a program for services to transition-aged youth at risk. The bill identifies services to be a part of the program, including individualized assessments, coordinated services, self-advocacy training, vocational rehabilitation, in-home support, and independent living skills training. The bill provides for the use of a wraparound planning process and a transition-aged youth at risk pilot project. The bill appropriates $700,000 from the general fund for the program and the pilot project.

OTHER RESPONSIBILITIES

The committee was also assigned to:

1. Receive a report from the State Department of Health before August 1, 2008, regarding the status of the department's demonstration project involving life safety surveys for basic care facilities and long-term care facilities during and at the conclusion of construction or renovation projects that cost more than $3 million and whether the program should be made permanent (House Bill No. 1004 (2007)).
2. Receive a report from the State Department of Health before August 1, 2008, regarding the impact of the implementation of the survey process for basic care facilities to identify and correct deficiencies (House Bill No. 1488 (2007)).

State Department of Health Life Safety Survey Demonstration Project Report

Subdivision 4 of Section 12 of House Bill No. 1004 required the State Department of Health to report to the Legislative Council before August 1, 2008, regarding the status of the department's demonstration project involving life safety surveys for basic care facilities and long-term care facilities during and at the conclusion of construction or renovation projects that cost more than $3 million and whether the program should be made permanent.

Background

Section 12 of House Bill No. 1004, approved by the 2007 Legislative Assembly, provides that during the

2007-09 biennium the State Department of Health design and implement a demonstration project to provide a life safety survey process for basic care and long-term care facilities to assess, voluntarily, a construction project, a renovation project, or a construction and renovation project costing more than $3 million. The department may charge a reasonable fee for the survey, the revenue of which is deposited into the State Department of Health's operating fund, to defray the food, lodging, and transportation expenses of the survey process. Subdivision 4 of Section 12 requires the department to report to the Legislative Council before August 1, 2008, regarding the status of the project, including the feasibility and desirability in making the program permanent and whether the department will be recommending any legislation to make the program permanent.

Report

The State Department of Health reported it received three requests from facilities to participate in the demonstration project. Two requests have been approved and the third is under consideration. The department contracted with a Minnesota Department of Health survey staff member to conduct the demonstration project surveys. Survey results of the facilities' level of satisfaction with the demonstration project were good to excellent. Total demonstration project costs were $3,918 and did not include the cost of plans review or administration of the demonstration project. The facilities reimbursed the department $1,200 and the department provided the remaining $2,718 from other areas of the department's budget. Since the demonstration project began, the department has dedicated approximately 250 hours to the development and implementation of the demonstration project, in addition to the time spent on surveys performed by a Life Safety Code surveyor under contract by the department. The demonstration project indicated the earlier onsite surveys resulted in fewer issues needing correction later which reduced cost and frustration on the part of both the industry and the department. The department is continuing to evaluate the demonstration project with regard to providing the onsite inspections to all construction and renovation projects without regard to size and provider type and charging a fee to the facilities for a portion of the cost.

The committee learned that federal regulations do not allow the department's life safety survey inspectors to conduct voluntary construction consultation services and also be involved in the federal certification process for the facility. To comply with the federal regulations the department suggested eliminating the voluntary component of the demonstration project and authorize the department to provide a number of inspections that lead to state licensure, and once licensed, the facility could seek federal certification.

The committee received information regarding the Knife River Care Center's experience of not having the benefit of being a part of the demonstration project. The inconsistencies between the inspectors and regional interpretations of rules caused unnecessary expenses that added an estimated $150,000 to the cost of the project for the facility.

The committee received information on the possibility of posting facility plans on the State Department of Health's website to provide additional information to facilities considering construction projects. The committee learned that due to restrictions relating to proprietary information and protections given to a copyright owner under the federal copyright law, the department may be prohibited from posting blueprints or floor plans on its website. The department is considering posting findings resulting from the Life Safety Code construction and renovation surveys and the initial licensure surveys on its website to provide additional information to facilities.

The committee learned the department will continue to work with the North Dakota Long Term Care Association to provide additional Life Safety Code training to architects and contractors across the state.

The committee heard testimony from nursing home administrators, a hospital administrator, and the North Dakota Long Term Care Association regarding the cost-savings of items identified during demonstration inspections and in support of making the demonstration project a permanent service of the State Department of Health, expanding the service to all health facilities licensed by the Division of Health Facilities of the State Department of Health, and removing the $3 million minimum project requirement.

Recommendations

The committee recommends Senate Bill No. 2046 to require the State Department of Health conduct surveys during construction or renovation projects of health facilities licensed by the State Department of Health. To provide this service, the department estimates the need for two full-time equivalent positions and funding of $300,000, of which $100,000 could be generated from fees and $200,000 provided from the general fund.

State Department of Health Basic Care Survey Process Report

Section 2 of House Bill No. 1488 required the State Department of Health to report to the Legislative Council before August 1, 2008, regarding the impact of implementation of a survey process for basic care facilities.

The State Department of Health reported on the impact of implementation of the basic care survey process. All Life Safety Code surveys have been completed on an announced basis and half of the health surveys have been completed on an unannounced basis. The announced and unannounced basic care survey process has not resulted in a significant change in the number of citations issued. The department provided information summarizing the Tier I and Tier II findings and the process utilized by the survey team. Tier I findings are isolated findings that have no more than a minimal potential for causing a negative impact on the residents and must be verified as corrected while the surveyor is onsite and prior to the exit conference, while Tier II findings are a pattern of findings of

noncompliance that have the potential for causing a negative impact or harm to the residents. Since implementation of the two-tiered survey process for identification of noncompliance, the department has conducted five announced and four unannounced health surveys resulting in 37 Tier I findings and 21 Tier II findings. Four Tier I findings were moved to Tier II because the facility was not found to be in compliance at the time of the revisit. Response from the providers and the surveyors to the two-tiered survey process has been positive and the department does not anticipate recommending any legislative changes to the survey process.

The committee heard testimony from the North Dakota Long Term Care Association in favor of continuing the two-tiered survey process, and the Protection and Advocacy Project suggested the committee consider discontinuing the announced survey process for basic care facilities since during the previous interim the pilot project results indicate that announced surveys resulted in fewer citations.

Recommendations

The committee made no recommendations regarding the report on the impact of implementation of the survey process for basic care facilities.

NATURAL RESOURCES COMMITTEE

The Natural Resources Committee was assigned three studies. Section 2 of House Bill No. 1146 (2007) directed a study of issues related to the severance of hunting access from the surface estate. House Concurrent Resolution No. 3026 (2007) directed a study of the feasibility and desirability of establishing legislation for the enforcement and assessment of civil penalties for violation of the one-call excavation notice system. House Concurrent Resolution No. 3044 (2007) directed a study of how the state might pursue additional uses of Lake Sakakawea and Missouri River waters for such beneficial purposes as domestic and industrial uses, recreation, fish and wildlife, and irrigation, and how the state, to enhance its use of the lake and river, might promote congressional review of the 1944 Flood Control Act and a reexamination by the Corps of Engineers of the way in which it manages the Missouri River system.

The Legislative Council also assigned to the committee responsibility for overview of the Garrison Diversion Project and related matters and any necessary discussions with adjacent states on water-related topics, to receive a report from the Game and Fish Department by July 1, 2008, regarding the department's findings and recommendations resulting from its study of hunter safety education requirements and hunter safety for all ages of hunters, and to receive a report from the State Water Commission by July 1, 2008, regarding the commission's findings and recommendations resulting from its assessment of the impact of tile drainage on the beneficial use of water by prior water appropriators.

The chairman of the Legislative Council also assigned to the committee responsibility to review State Water Commission operation and procedures; to receive periodic reports from the State Water Commission relating to the implementation of 2007 Session Laws Chapter 559, authorizing the State Water Commission to issue bonds for the Red River Valley Water Supply Project; and to receive periodic reports on the development of a digital elevation model for the Red River Basin.

Committee members were Senators Tim Flakoll (Chairman), Arden C. Anderson, Tom Fischer, Joel C. Heitkamp, and Stanley W. Lyson and Representatives Ole Aarsvold, Chuck Damschen, Duane L. DeKrey, Donald D. Dietrich, C. B. Haas, Lyle Hanson, Brenda Heller, Darrell D. Nottestad, Louis Pinkerton, and Todd Porter.

The committee submitted this report to the Legislative Council at the biennial meeting of the Council in November 2008. The Council accepted the report for submission to the 61st Legislative Assembly.

SEVERANCE OF HUNTING ACCESS FROM SURFACE ESTATE STUDY

Background

North Dakota Century Code (NDCC) Section 47-05-17--Section 1 of House Bill No. 1146--prohibits severance of the right of access for hunting access. This section provides that the right of access to land to shoot, shoot at, pursue, take, attempt to take, or kill any game animals or game birds; search for or attempt to locate or flush any game animals and game birds; lure, call, or attempt to attract game animals or game birds; hide for the purpose of taking or attempting to take game animals or game birds; and walk, crawl, or advance toward wildlife while possessing implements or equipment useful in the taking of game animals or game birds may not be severed from the surface estate. The prohibition does not apply to deeds, instruments, or interests in property recorded before the effective date of the Act (August 1, 2007). Section 2 directed a study of issues related to the severance of hunting access from the surface estate. Section 3 provided an effective date through July 31, 2009, and after that date the Act is ineffective. The legislative history reflects the concern of the Legislative Assembly with the severance of hunting rights.

Generally, property may be viewed as a bundle of sticks with each stick in the bundle representing a separate property interest. If one owns all the sticks or interests in a piece of property and, thus, all of the interests in that piece of property, that person is said to own the property in fee simple absolute. The terms "fee simple" and "fee" are synonymous with fee simple absolute, the largest quantum of interest that a landowner can possess. There are two other kinds of fees simple--the fee simple determinable and the fee simple subject to a condition subsequent. These are defeasible fees or determinable fees and also are referred to as base or qualified fees. Another type of property interest is the life estate. Life estates are generally measured or operative during a lifetime.

The right of fishing and taking game or hunting is an interest in property or one of the sticks that comprises a property interest. This right may be severed from the remaining interests or sticks comprising a property interest and is transferable. North Dakota Century Code Section 47-05-17, however, prohibits the severance of the right of access for hunting access from August 1, 2007, until July 31, 2009.

Research has not revealed any other state that has enacted a similar provision prohibiting or restricting the severance of the right of access for hunting access.

In an attempt to determine the extent of the practice of severing the right of access for hunting access from the surface estate, the Legislative Council staff conducted a survey of the state's county recorders. Twenty-two of the 53 county recorders responded--Adams, Barnes, Burke, Burleigh, Cass, Dickey, Divide, Grant, Kidder, McHenry, McIntosh, McKenzie, McLean, Nelson, Oliver, Ramsey, Renville, Slope, Stark, Towner, Walsh, and Wells Counties. The county recorders of Adams, Barnes, Burke, Dickey, Divide, Grant, McIntosh, McKenzie, Oliver, Ramsey, Slope, Stark, Towner, Walsh, and Wells Counties reported that to the best of their knowledge they had not recorded any documents severing the right of access for hunting access. The remaining seven counties that responded reported that

they had each recorded one or several but not a great number of documents severing the right of access for hunting access.

Testimony and Committee Activities

Representatives of the Game and Fish Department testified that the department will spend approximately $12 million this biennium in securing access for hunters in North Dakota. The Attorney General has advised the department that easements obtained for the private land habitat and access improvement program, especially long-term easements, should be recorded. A question concerning NDCC Section 47-05-17, however, is whether such interests may be severed and whether an instrument granting an easement for the private land habitat and access improvement program may be recorded.

The committee considered a bill draft to remove the July 31, 2009, expiration date from NDCC Section 47-05-17, in effect making the prohibition on the severance of the right of access for hunting access permanent. The committee received testimony from representatives of the North Dakota Stockmen's Association that the association has a great deal of concern with severing certain land use rights and that the association opposes the sale of hunting, recreational, and access rights that effectively severs those rights from the surface of the land. Representatives of the North Dakota Farmer's Union also testified in support of the bill draft.

Representatives of the Game and Fish Department testified that if NDCC Section 47-05-17 is made permanent, the committee should consider an amendment that the provision does not apply to the private land habitat and access improvement program under Title 20.1. The committee received testimony from a landowner that the bill draft relating to severance of the right of access for hunting access from the surface estate infringes on the rights of private property owners and Section 47-05-17 should be allowed to expire.

Recommendation

The committee recommends House Bill No. 1045 to remove the July 31, 2009, expiration date from NDCC Section 47-05-17 and to provide that the prohibition on the severance of the right of access for hunting access does not apply to the private land habitat and access improvement program under NDCC Title 20.1.

ONE-CALL EXCAVATION NOTICE SYSTEM CIVIL PENALTY STUDY

Background

House Concurrent Resolution No. 3026 directed a study of the feasibility and desirability of establishing legislation for the enforcement and assessment of civil penalties for violation of the one-call excavation notice system. Proponents of the study noted that the provisions of the North Dakota one-call excavation notice system do not include a civil process for the enforcement of the one-call excavation notice system or for any civil penalty assessment for violation of the system. Proponents of the study noted that stakeholders had been working on a bill to provide for a civil process for enforcement and provisions for the assessment of a civil penalty to present to the 60th Legislative Assembly. However, complications arose from not being able to determine how to carry out a penalty phase and what entity would be responsible for administering a penalty provision. Representatives of North Dakota One Call testified that it has been studying penalties and enforcement provisions specific to the one-call excavation notice system because the Public Service Commission has encouraged North Dakota One Call to initiate enforcement legislation and the Public Service Commission suffers federal grant fund reductions due to the absence of state one-call enforcement provisions; Northern Border Pipeline and Alliance Pipeline have requested such legislation in response to "near miss" excavations adjacent to their buried facilities; and recently enacted federal legislation includes language encouraging state one-call systems to provide enforcement of their statutes to protect pipelines and other utilities.

North Dakota One-Call Excavation Notice System

The North Dakota one-call excavation notice system is governed by NDCC Chapter 49-23. The notification center is governed by a nonprofit corporation. Section 49-23-04 provides that, except in an emergency, an excavator must contact the notification center and provide an excavation or location notice at least 48 hours before beginning any excavation, excluding Saturdays, Sundays, and holidays, unless otherwise agreed between the excavator and operator. The notification center is required to provide a toll-free telephone number, assign an inquiry identification number to each excavation notice, and retain a record of all excavation notices received for at least six years. The notification center is required to immediately transmit the information contained in an excavation notice to every operator that has an underground facility in the area of the proposed excavation. The notification center is required to inform persons giving notice of intent to engage in an excavation activity the names of participating operators of underground facilities to whom the notice will be given and to establish procedures for assuring positive response from the affected operator and all emergency excavation notices. An operator, within 48 hours or any extension of that period, after receiving excavation notice from the center, excluding Saturdays, Sundays, and holidays, unless otherwise agreed between the excavator and operator, is required to locate and mark or otherwise provide the approximate horizontal location of the underground facilities of the operator.

As used in NDCC Chapter 49-23, "excavator" means a person who conducts excavation, and "operator" means a person who owns or operates an underground facility, including a master meter operator with underground facilities or a state or local governmental entity. An underground facility is an underground line, facility, system, and its appurtenances used to produce, store, convey, transmit, or distribute communications, data, electricity, power, television signals, heat, gas, oil,

petroleum products, water, steam, sewage, hazardous liquids, and other similar substances. Privately owned and operated underground facilities that do not extend beyond the boundary of the private property are excluded from the definition of underground facility.

North Dakota Century Code Section 49-23-06 contains a penalty for damage to facilities. If any damage occurs to an underground facility or its protective covering, the excavator is to notify the operator as soon as reasonably possible. When the operator receives a damage notice, the operator is to dispatch, as soon as reasonably possible, personnel to the damaged area to investigate. If the damage endangers life, health, or property, the excavator responsible for the work is to take immediate action to protect the public and property and to minimize the hazard until arrival of the operator's personnel or until emergency responders have arrived and taken charge of the damaged area. This section requires the excavator to delay backfilling in the immediate area of the damaged underground facilities until the damage has been investigated by the operator, unless the operator authorizes otherwise. Repair of damage must be performed by the operator or by qualified personnel authorized by the operator. An excavator who knowingly damages an underground facility and who does not notify the operator as soon as reasonably possible or who backfills in violation of this section is guilty of a Class A misdemeanor. If an excavator fails to comply with Chapter 49-23 or damages an underground facility, the excavator is liable for all damages caused by the failure to comply with the chapter and for all damages to the facilities and must reimburse the operator for the cost of repair and restoration, loss of product, and interruption of service occurring because of the damage or injury to the facilities, together with reasonable costs and expenses of suit, including reasonable attorney's fees. Reimbursement to the operator is not required if the damage to the underground facility was caused by the sole negligence of the operator or the operator failed to comply with the relevant provisions of Chapter 49-23.

South Dakota

The South Dakota Statewide One-Call Notification Board is an agency of state government administered by the South Dakota Public Utilities Commission and funded solely by revenue generated by the one-call notification center. South Dakota Codified Laws Sections 49-7A-18 and 49-7A-19 contain penalties for violating the relevant provisions of the South Dakota one-call excavation notice system. Except for penalties for intentional violations and in addition to all other penalties provided by law, a person who violates or who procures, aids, or abets in the violation of the relevant sections of the South Dakota one-call excavation notice system or any rules adopted pursuant to these sections may be assessed a penalty of up to $1,000 for the first violation and up to $5,000 for a subsequent violation that occurs within 12 months of the initial violation. An intentional violation is subject to a penalty of up to $5,000 for the first violation and up to $10,000 for each subsequent violation that occurs within 12 months of the initial violation. If the penalty is not paid to the One-Call Notification Board, the Public Utilities Commission, at the request of the board, is required to bring an action in the name of the state to recover the penalty.

Minnesota

The Minnesota one-call excavation notice system is governed by Minnesota Statutes Chapter 216D. The Minnesota Notification Center is governed by a nonprofit corporation approved in writing by the Commissioner of Public Safety. Section 216D.08 provides a civil penalty for violation of the chapter. A person that is engaged in excavation for remuneration or an operator that violates the relevant sections of Chapter 216D is subject to a civil penalty to be imposed by the Commissioner of Public Safety not to exceed $1,000 for each violation per day of violation. The commissioner may negotiate a compromise settlement of a civil penalty. In determining the amount of the penalty, or the amount of the compromise settlement, the commissioner is required to consider the appropriateness of the penalty to the size of the business of the person charged, the gravity of the violation, and the good faith of the person charged in attempting to achieve compliance after notification of a violation. The penalty is subject to judicial review. Penalties collected are deposited in the state treasury and credited to the pipeline safety account to be applied to the reduction of expenses or costs assessed by the commissioner against persons regulated under the system. Penalties collected are appropriated annually to the Commissioner of Public Safety.

The Commissioner of Public Safety is authorized to adopt rules establishing reasonable guidelines for imposing penalties. The rules must provide for notice that a penalty is assessed and may exempt activities from penalties unless the excavator or operator has evidence of a course of action in disregard of the chapter. State district courts have jurisdiction to restrain violations of Minnesota Statutes Chapter 216D on petition by the Attorney General on behalf of the state of Minnesota.

The Commissioner of Public Safety has adopted rules for the assessment of civil penalties and maximum penalties. Subpart 3 of Section 7560.0800 of the Minnesota Code of Agency Rules provides that in assessing a civil penalty the Office of Pipeline Safety of the Department of Public Safety must consider the nature, circumstances, and gravity of the violation; the degree of the person's culpability; the person's history of previous offenses; the person's ability to pay; good faith on the part of the person in attempting to remedy the cause of the violation; the effect of the penalty on the person's ability to continue in business; and past reports of damage to an underground facility by a person. Concerning maximum penalties, penalties imposed against excavators may not exceed $1,000 for each violation per day of violation. However, penalties imposed against an operator that engages in the transportation of gas or hazardous liquids or that owns or operates a gas or hazardous liquid pipeline facility may not exceed $10,000 for each violation for each day that the violation persists, except that the maximum civil

penalty may not exceed $500,000 for a related series of violations.

Montana

Excavations near underground facilities in Montana are governed by Montana Code Annotated Section 69-4-501 et seq. If an underground facility is damaged by an excavator that has failed to obtain information as to its location, the excavator is liable to the owner of the underground facility for the entire cost of the repair of the facility. The excavator also is liable to the underground facility owner that is a member of a one-call notification center for a damage fee. The damage fee is 25 percent of the total cost of repairing the underground facility not to exceed $125 for the first incident, 50 percent of the total cost of repairing the underground facility not to exceed $500 for the second incident, and $1,000 for the third and any subsequent incident. An underground facility owner may levy only one fee for each incident. If there is more than one underground facility affected by an incident, then each underground facility owner that is a member of a one-call notification center may levy one damage fee for that incident. The underground facility owner may enforce collection in a court of competent jurisdiction. An excavator subject to repair charges and damage fees may have those costs reviewed by a court of competent jurisdiction.

Testimony and Committee Activities

Representatives of North Dakota One Call testified that the rationale for the one-call excavation notice system is to promote the safety of individuals excavating near underground facilities and to protect those underground facilities from excavators. Under current law a person who damages an underground facility is responsible for the repair of the facility and is liable for any lost product as a result of the damage. Representatives of North Dakota One Call said the board is interested in having a civil penalty placed in North Dakota law for a variety of reasons. First, the absence of a civil penalty in North Dakota's law limits the amount of grant funding available to the Public Service Commission from the federal Office of Pipeline Safety. Second, enforcement legislation would motivate operators, excavators, and underground facility owners to comply with the notice law. Several stakeholders testified that they believed that some excavators and contractors are well aware of the law's requirements but find it cheaper to go ahead with the excavation and then pay for any damage incurred after the excavation.

Committee Considerations

The committee considered a bill draft that would have made North Dakota One Call a state agency funded by revenue generated by the One-Call Excavation Notice Center. Under the bill draft, in addition to any other penalty provided by law, an excavator that violated or procured, aided, or abetted in the violation of NDCC Chapter 49-23 or any rule adopted to implement the chapter would have been subject to a civil penalty of up to $500 for the first violation, up to $1,000 for the second violation, and up to $5,000 for the third and each subsequent violation that occurred within 24 months of the initial violation. An excavator who intentionally violated and intentionally procured, aided, or abetted in the violation of Chapter 49-23 or any rule adopted to implement the chapter would have been subject to a civil penalty of up to $1,000 for the first violation, up to $5,000 for the second violation, and up to $10,000 for the third and each subsequent violation that occurred within 24 months of the initial violation. These penalties would have been construed as civil and not criminal in nature. Complaints would have been brought to the North Dakota One-Call Board for resolution. Upon receipt of a complaint, the chairman of the North Dakota One-Call Board would have been required to appoint a panel consisting of three members or five members of the board for the purpose of determining whether there was probable cause to believe there had been a violation of Chapter 49-23 or a rule adopted to implement that chapter. The board would have been required to deposit all civil penalties collected by the board in a special account that would have been used for educational programs, advertisements, penalty recovery expenses, and damage caused by excavators that were financially unable to pay for the damage caused by their excavation. Actions or proceedings of the board would have been reviewable by the district court for the county in which the property subject to the complaint was located.

The committee also considered a bill draft that would have established a civil penalty, but provided that the penalty would be imposed by the Public Service Commission rather than the North Dakota One-Call Board.

Conclusion

Representatives of the Public Service Commission testified that after thorough review of its existing statutory authority, it determined that the commission already has sufficient authority to enforce the one-call excavation notice system and to assess a civil penalty. Thus, the committee determined, with the concurrence of the Public Service Commission, that legislation is not necessary.

MISSOURI RIVER AND *MASTER MANUAL* REVIEW STUDY

House Concurrent Resolution No. 3044 directed a study of how the state might pursue additional uses of Lake Sakakawea and Missouri River waters for such beneficial purposes as domestic and industrial uses, recreation, fish and wildlife, and irrigation, and how the state, to enhance its use of lake and river, might promote congressional review of the Flood Control Act of 1944 and a reexamination by the Corps of Engineers of the way in which it manages the Missouri River system. The resolution notes that a significant natural resource issue for the state, as well as the nation, is management of the Missouri River and Lake Sakakawea and that since enactment of the Flood Control Act of 1944, which governs Missouri River management, numerous economic, environmental, and social changes have occurred in the Missouri River Basin. The resolution

also notes that the United States Army Corps of Engineers' management of the Missouri River system is outdated and restricts the ability of the state and its citizens to use Lake Sakakawea and Missouri River water creatively, judiciously, and consistently with contemporary needs and opportunities.

Missouri River

The Missouri River extends 2,619 miles from its source at Hell Roaring Creek and 2,321 miles from Three Forks, Montana, where the Jefferson, Madison, and Gallatin Rivers converge. The Missouri River is the longest river in the United States, draining one-sixth of the country. The Missouri River system consists of six dams and reservoirs located in Montana, North Dakota, South Dakota, and Nebraska. The Missouri River system has a capacity to store 73.4 million acre-feet of water, which makes it the largest reservoir system in North America. The United States Army Corps of Engineers operates the system to serve the congressionally authorized project purposes of flood control, navigation, irrigation, hydropower, water supply, water quality, recreation, and fish and wildlife. Runoff from above-the-system dams is stored in the six reservoirs where it serves several other project purposes. Water is released from the system as needed for downstream purposes. Released water from the lowest dam in the system--Gavins Point Dam--flows down the lower river, which includes the bank stabilization and navigation project from Sioux City, Iowa, to St. Louis, Missouri.

The State Water Commission issued its most recent state water management plan in 1999. The objectives of the *1999 State Water Management Plan* are to develop a comprehensive vision for water management for the 21st century, to illustrate how North Dakota water resources are managed and the responsibilities associated with that management, and to identify changes that should occur to improve water management. The *1999 State Water Management Plan* has been updated and supplemented by biennial water development reports, the most recent of which was issued in December 2006. The plan notes that nearly 96 percent of North Dakota's surface water is located in the Missouri River and its reservoirs. Lake Sakakawea and Lake Oahe account for approximately 97 percent of all available water storage. The largest use of Missouri River water is for energy production, of which roughly 96 percent is nonconsumptive. The total annual North Dakota consumptive water use from the Missouri River accounts for slightly over 1 percent of the annual flow of the river as it leaves the state.

The *1999 State Water Management Plan* notes that the greatest opportunities for development of Missouri River water are irrigation and municipal, industrial, and rural water supply. Federal support for the development of North Dakota irrigation has declined with the numerous reauthorizations of the Garrison Diversion Project. Originally planned to irrigate 1.2 million acres, the Dakota Water Resources Act of 2000 retains authority for only 73,100 acres of irrigated land.

The *1999 State Water Management Plan* notes that the state has significant potential for new irrigation development in 6.1 million acres of irrigable soils. However, without a supply project, many of these areas do not have an adequate source of water. To date the state, local entities, and private business have provided much of the needed capital and infrastructure requirements in those areas that have been developed. The plan identifies irrigation potential along the banks of Lake Sakakawea and on the Standing Rock and Fort Berthold Indian Reservations. Raw water from the Southwest Pipeline Project could supply a small amount of water for irrigation. The plan notes that each successful irrigation project, in a state ranked last among the 17 western states in terms of full irrigation, would provide economic opportunities. However, an important element to the success of these projects will be access to federal power. Project pumping power, provided through the original Pick-Sloan Missouri River Basin Program, is necessary to further ensure the success of future irrigation projects.

The *1999 State Water Management Plan* notes that the need for Missouri River water for municipal, rural, and industrial water purposes has grown since 1980. Much of this growth can be attributed to increases in population in communities along the Missouri River and the development of the Southwest Pipeline Project. The plan notes that with the addition of the Missouri West Water Supply Project and the Northwest Area Water Supply Project, Missouri River water will be supplied to much of western North Dakota and to more than 95,000 people.

Water Project Funding

The *1999 State Water Management Plan* notes that water development in North Dakota will not move forward without adequate fiscal resources to support it. As the cost of new projects increases and the money available at federal and state levels decreases, funding mechanisms for water development must change. The report states that the state must explore future alternatives for funding water development in a fair and equitable manner and consistent with the state's vision of water management.

Federal Funding for Water Development

The federal government provides a number of water-related funds to the state. Most federal funding, measured in total financial commitment available for water development, is allocated through a municipal, rural, and industrial water supply program. Under this program funds are disbursed to the Garrison Diversion Conservancy District and allocated through a joint powers agreement with the State Water Commission.

The United States Army Corps of Engineers and the Natural Resources Conservation Service regularly provide technical and funding assistance to resolve water management issues, such as flood control at Grand Forks and Devils Lake. The United States Geological Survey and Environmental Protection Agency provide important aid in monitoring and research efforts.

With regard to other federal funding, the United States Army Corps of Engineers provides significant assistance to the state for flood control projects. The Environmental Protection Agency, Bureau of Reclamation, United States Geological Survey, and Natural Resources Conservation Service also contribute to the state's water development efforts in many different ways, including studies, project design, and project construction.

State Funding for Water Development

North Dakota funds a majority of its water projects through the State Water Commission. The funding funneled through the commission for water development comes from several sources, including the state's general fund; the Dakota Water Resources Act's municipal, rural, and industrial water supply program; the resources trust fund; and the water development trust fund. In addition to these sources, the commission also is authorized to issue revenue bonds for water projects. The commission also has shared control of the drinking water state revolving loan fund.

Municipal, Rural, and Industrial Water Supply Program

The municipal, rural, and industrial water supply program receives funding through the federal Dakota Water Resources Act, which channels grant funding through the Bureau of Reclamation. Rural development funding through the United States Department of Agriculture has provided the majority of loans to cover the local share of municipal, rural, and industrial water supply projects.

The Garrison Reformulation Act of 1986 authorized a federal municipal, rural, and industrial water supply grant program of $200 million. To date all of that funding has been obligated. Efforts to obtain additional federal funding authorization for the municipal, rural, and industrial water supply program were successful with the passage of the Dakota Water Resources Act of 2000. The Act provides resources for general, municipal, rural, and industrial water supply projects; the Northwest Area Water Supply Project; the Southwest Pipeline Project; and a project to address water supply issues in the Red River Valley. Under the Act, an additional $600 million was authorized, which includes a $200 million grant for state municipal, rural, and industrial water supply projects; a $200 million grant for Indian, municipal, rural, and industrial water supply projects; and a $200 million loan for a Red River Valley Water Supply Project. Annual municipal, rural, and industrial water supply funding is dependent upon congressional appropriation, and project delays have resulted due to varying amounts of annual appropriations. As of December 2006, $6.6 million in federal funds had been approved for the state's municipal, rural, and industrial water supply program for federal fiscal years 2005 and 2006.

Resources Trust Fund

The resources trust fund was created pursuant to passage of measure No. 6 in the November 1980 general election. Measure No. 6 created a 6.5 percent oil extraction tax, 10 percent of which was to be allocated to the resources trust fund. In June 1990 the Constitution of North Dakota was amended to establish the resources trust fund as a constitutional trust fund and provide that the principal and income of the fund could be spent only upon legislative appropriations for construction of water-related projects, including rural water systems and energy conservation programs. In November 1994 the voters of North Dakota approved a constitutional amendment, codified as Article X, Section 24, of the Constitution of North Dakota, to provide that 20 percent of oil extraction taxes be allocated as follows: 50 percent of the 20 percent to the common schools trust fund and 50 percent of the 20 percent to the foundation aid stabilization fund. North Dakota Century Code Section 57-51.1-07 provides that 20 percent of oil extraction tax revenues be distributed to the resources trust fund, 20 percent of the revenues allocated as provided in Article X, Section 24, of the Constitution of North Dakota, and 60 percent of the revenues to the general fund. The 60th Legislative Assembly appropriated $69,352,698, or any additional amount that becomes available, from the resources trust fund for the purpose of defraying the expenses of the State Water Commission. The total expenditures will be limited to available funding. Additional new revenue into the resources trust fund will come from Southwest Pipeline Project reimbursements; municipal, rural, and industrial water supply program loan repayments, which amount to $1 million per biennium through 2017; interest; and future oil extraction tax revenue.

Water Development Trust Fund

North Dakota Century Code Section 54-27-25 establishes a water development trust fund to be used for the long-term water development and management needs of the state. This section creates a tobacco settlement trust fund for the deposit of all tobacco settlement money obtained by the state. Ten percent of the money in the fund must be transferred within 30 days of its deposit in the fund to the community health trust fund, 45 percent of the money to the common schools trust fund, and 45 percent of the money to the water development trust fund.

North Dakota Century Code Section 61-02.1-04 provides that the principal and interest on bonds issued for flood control projects, the Southwest Pipeline Project, and the Devils Lake Outlet must be repaid with money appropriated from the water development trust fund.

Bonds

The State Water Commission has bonding authority under NDCC Section 61-02-46 to issue revenue bonds of up to $2 million per project. The Legislative Assembly must authorize revenue bond authority beyond the $2 million per project. In 1991 the Legislative Assembly authorized full revenue bond authority for the Northwest Area Water Supply Project, and in 1997 the Legislative Assembly authorized $15 million of revenue bonds for the Southwest Pipeline Project. In 2001 the Legislative Assembly raised the Southwest Pipeline Project bonding authority to $25 million.

In 1999 the Legislative Assembly authorized the State Water Commission to issue up to $84.8 million in appropriation bonds. The Legislative Assembly's intent was to partially fund flood control projects at Grand Forks, Devils Lake, Wahpeton, and Grafton and to continue funding for the Southwest Pipeline Project. In March 2000 the State Water Commission issued bonds generating $27.5 million, thus reducing available bonding authority to $57.3 million. Recognizing the need for water development projects in addition to those identified in 1999, in 2003 the Legislative Assembly allowed authority for the unissued $57.3 million to expire but then authorized $60 million of bonding authority for statewide water development projects. In June 2005 the State Water Commission issued bonds generating $60 million. In 2005 the Legislative Assembly authorized an additional $7 million of bonding authority for statewide water development projects during the 2005-07 biennium. Because tobacco settlement dollars are not projected to remain uniform each year, the State Water Commission has established a repayment schedule to correspond with the projected tobacco receipts. Although repayment amounts are based on the projected receipts, the scheduled repayments must be made regardless of the actual receipts. Payments for existing water development bonds will be $14 million for the 2007-09 biennium.

Drinking Water State Revolving Loan Fund

An additional source of funding for water supply development projects is the drinking water state revolving loan fund. Funding for this program is distributed in the form of a loan program through the Environmental Protection Agency administered by the State Department of Health. The drinking water state revolving loan fund provides below market interest rate loans of 3 percent to public water systems for capital improvements aimed at increasing public health protection and compliance with the federal Safe Drinking Water Act.

Master Manual

The *Missouri River Master Water Control Manual* or *Master Manual* is the guide used by the United States Army Corps of Engineers to operate the system of six dams on the Missouri River main stem reservoir system--Fort Peck, Garrison, Oahe, Big Bend, Fort Randall, and Gavins Point Dams.

First published in 1960 and subsequently revised during the 1970s, the *Master Manual* was revised in March 2004 to include more stringent drought conservation measures. The 2003 amendment to the 2000 biological opinion presented the United States Fish and Wildlife Service's opinion that the regulation of this system would jeopardize the continued existence of the endangered pallid sturgeon. The United States Fish and Wildlife Service provided a reasonable and prudent alternative to avoid jeopardy to the pallid sturgeon that included a provision for the United States Army Corps of Engineers to develop a plan to implement a bimodal "spring pulse" from Gavins Point Dam. Working with the United States Fish and Wildlife Service, tribes, states, and basin stakeholders, the United States Army Corps of Engineers developed technical criteria for the bimodal spring pulse releases. In March 2006 the *Master Manual* was revised to include technical criteria for a spring pulse. The March 2006 revisions were challenged by the state of Missouri in *Missouri v. United States Army Corps of Engineers* (Civil No. 06-1616). The United States District Court for the District of Minnesota found that the United States Army Corps of Engineers did not violate the National Environmental Policy Act by preparing an environmental assessment rather than supplementing the final environmental impact statement when it implemented the revisions to the *Master Manual*. The court found that the corps also complied with the National Environmental Policy Act in its consideration of a range of alternatives to the revisions. The court found that the corps fully analyzed the environmental impacts of the revisions and adhered to all administrative and regulatory requirements and that therefore the revisions to the *Master Manual* were not made arbitrarily, capriciously, or contrary to law.

In September 2007 the United States Army Corps of Engineers released the draft of the *2007-08 Annual Operating Plan for the Missouri River Main Stem System*. The draft annual operating plan presents pertinent information and plans for regulating the Missouri River main stem reservoir system through December 2008 under widely varying water supply conditions. The plan provides a framework for the development of detailed monthly, weekly, and daily regulation schedules for the system's six individual dams during the coming year to serve the congressionally authorized project purposes; to fulfill the corps' responsibilities to American Indian tribes; and to comply with environmental laws, including the Endangered Species Act.

Testimony and Committee Activities

The Missouri River Association of States and Tribes is a regional interstate organization formed by joint resolution of the Governors of Wyoming, Montana, North Dakota, South Dakota, Nebraska, Iowa, and Kansas and the Mni Sose Intertribal Water Rights Coalition. The organization was formed to help resolve issues of concern to the basin states and tribes; to serve as a forum to foster communication and information exchange among the member states, tribes, and various other governmental units; and to facilitate the management of the natural resources of the Missouri River Basin, including water resources and fish and wildlife, while considering economic, historical, cultural, and social impacts in the basin. A representative of the association reported that the association took action at its February 25, 2008, meeting to request a study to determine whether changes are needed to the congressionally authorized purposes of the Missouri River main stem reservoir system in order to best meet the contemporary needs of the basin. The Corps of Engineers has indicated that it will not initiate such a study without a congressional directive and funding.

The Missouri River main stem reservoir system is operated in accordance with the Flood Control Act of

1944 for various authorized purposes, including flood control, water supply, irrigation, hydropower, navigation, recreation, and fish and wildlife. Over 60 years have passed since the Flood Control Act of 1944 was enacted. While the construction of the reservoir system and other works have resulted in large project benefits from some of the authorized purposes and much less for others, it has also created substantial environmental impacts, such as a large loss of wetlands and habitat for a number of native species. As a result, two birds and one fish are now listed as threatened or endangered under the Endangered Species Act, and many other species have suffered major declines. The need for protection of historical and cultural resources is now well documented.

The representative of the Missouri River Association of States and Tribes reported that while some of the authorized purposes, such as flood control and hydropower, have provided substantial benefits as expected, other purposes, such as irrigation and navigation, have not come anywhere close to the expectations when the project was authorized. Other project purposes, such as municipal and industrial water supply, have become increasingly important as the population has grown and multiyear droughts have occurred. In addition to the negative impacts to recreation and water supply, and the expense of modifications required to lower water supply intakes in the reservoirs and on the river downstream, extended drought and low reservoir levels caused by current system operations have caused serious impacts to hydropower production. The Western Area Power Administration, which markets power to wholesale customers in the basin, has had its ability to meet firm power demands severely impacted, with much of that impact due to loss of generating efficiency resulting from low reservoir levels. This has resulted in a 37.3 percent increase in rates to wholesale customers since January 2004 to cover the cost of purchasing power in the open market. Still other project purposes, such as recreation have grown far more than expected. Ecosystem restoration has become essential to recover the endangered species, avoid actions that jeopardize the continued existence of the endangered pallid sturgeon, and allow other project purposes to continue to generate economic benefits.

The committee reviewed United States S.3258, making appropriations for energy and water development and related agencies for the fiscal year ending December 30, 2009. Section 108 of the bill would authorize the Secretary of the Army to conduct a study, at a total cost of $25 million, of the projects located within the Missouri River Basin with the express purpose to review the original project purposes based on the Flood Control Act of 1944, as amended, and other subsequent relevant legislation and judicial rulings to determine if changes to the authorized project purposes and existing federal water resource infrastructure may be warranted.

The director of the Game and Fish Department and a representative of the North Dakota Chapter of The Wildlife Society emphasized the need for the committee to request the North Dakota congressional delegation to call for appropriate studies to amend the Flood Control Act of 1944 to meet the contemporary needs of the Missouri River Basin.

Conclusion

The committee authorized the chairman to send a letter to the chairman of the United States Senate Committee on Appropriations stating that the Natural Resources Committee, in concurrence with the chairman of the Legislative Council, supports Section 108 of S.3258. The letter stated that as selected representatives of North Dakota, the members of the Natural Resources Committee believe that Congress needs to objectively evaluate the original project purposes to determine whether meaningful changes may be warranted and to establish a timeline to meet those changes. As the Secretary of the Army studies current and future needs of the Missouri River Basin, the committee requested that the study include the economic, social, health, environmental, irrigation, and cultural needs of the Missouri River Basin. The letter concluded that the issue is one of great importance to the state and urged the Senate Committee on Appropriations, the Congress of the United States, and the President to support the study.

GARRISON DIVERSION PROJECT AND RED RIVER VALLEY WATER SUPPLY PROJECT

The committee has responsibility for overview of the Garrison Diversion Project and related matters and any necessary discussions with adjacent states on water-related topics. The Garrison Diversion Conservancy District is an instrumentality-political subdivision of the state created in 1955 to construct the Garrison Diversion Unit of the Missouri River Basin Project as authorized by Congress on December 22, 1944. Amendments enacted by Congress in 1986 and 2000 have changed the Garrison Diversion Unit from a million-acre irrigation project into a multipurpose project with an emphasis on the development and delivery of municipal and rural water supplies. The mission of the Garrison Diversion Conservancy District is to provide a reliable, high-quality, and affordable water supply for the benefit of North Dakota.

The Dakota Water Resources Act of 2000, an amendment to the Garrison Diversion Reformulation Act of 1986, authorizes $200 million for construction of the Red River Valley Water Supply Project to meet the needs of the Red River Valley. The Act authorized two studies. The Secretary of the Interior has conducted a comprehensive study of the water quality and quantity needs of the Red River Valley and possible options for meeting those needs. The Secretary and the state, represented by the Garrison Diversion Conservancy District, jointly prepared an environmental impact statement concerning all feasible options to meet the comprehensive water quality and quantity needs of the Red River Valley. The final environmental impact statement was released in December 2007.

Representatives of the Garrison Diversion Conservancy District briefed the committee on the decisionmaking process that was used to arrive at the Garrison Diversion Unit import to the Sheyenne River--the preferred alternative--to deliver water to the Red River Valley. The Red River Valley study examined water from the Lake of the Woods, Minnesota ground water sources, the Red River and Red Lake River, and the Missouri River. The study determined Missouri River water to be the best source of water and identified two Missouri River water solutions. The first alternative is to import Missouri River water through the Garrison Diversion Unit to the Sheyenne River. The second alternative is to import Missouri River water to the Red River Valley. Although either alternative solves the problem, however, each operates differently. The Sheyenne River alternative imports water to Lake Ashtabula for distribution while the Missouri River alternative imports water directly by pipeline to water systems in the Red River Valley. Both alternatives are supplemental water supplies and rely on a combination of in-basin and Missouri River water. Neither alternative is a replacement water supply project like the Northwest Area Water Supply Project or Southwest Pipeline Project.

Representatives of the Garrison Diversion Conservancy District presented a comparison of the two alternatives, including environmental impacts; life expectancy; construction costs; annual operations, maintenance, and replacement costs; and a review of engineering issues concerning the projects. Representatives of the Garrison Diversion Conservancy District reported that the Garrison Diversion Unit import to Sheyenne River alternative--the preferred alternative--provides more flexibility, more reliability, additional environmental benefits, lower capital costs, and lower operations and maintenance costs. The preferred alternative would be significantly less expensive--$659.8 million versus $1.065 billion.

HUNTER SAFETY EDUCATION REPORT

The Legislative Council assigned the committee the responsibility to receive a report from the Game and Fish Department by July 1, 2008, regarding the department's findings and recommendations resulting from its study of hunter safety education requirements and hunter safety for all ages of hunters. Representatives of the Game and Fish Department reported that the department reviewed existing hunter safety education requirements, the minimum hunting age requirements of other states, and the hunter education age requirements of other states. The representatives reported that the department is conducting an ongoing study of the recruitment and retention of hunters in North Dakota. They also reported that the department has several considerations under review, including removing barriers to hunting, such as the families field initiative, hunter education in schools, and outdoor programs.

TILE DRAINAGE REPORT

The Legislative Council assigned the committee the responsibility to receive a report from the State Water Commission by July 1, 2008, regarding the commission's findings and recommendations resulting from its assessment of the impact of tile drainage on the beneficial use of water by prior water appropriators.

The State Engineer requires a drainage permit be obtained for subsurface drains. However, some water resource districts are reticent to enforce the permit requirement for tile drains because of concern that the requirement may not be supported by state law. The committee learned that the State Engineer is seeking clarification from the Attorney General regarding the authority for requiring drainage permits for tile drains.

Representatives of the State Water Commission reported that as of June 2008 there were a total of 131 approved permits for tile-drained fields and 34 permit applications pending approval. All approved permits were distributed within 11 counties, and all except one were near or within the Red River Valley. According to the commission database, estimated statewide drained acreage is 22,963 acres.

Commission representatives reported that potential conflict between tile drainage and pumping for beneficial use of water could occur only when tile drainage is implemented over aquifers. Approximately 20 percent of all current tile drain permits are located over glacial aquifers. Approximately 35 percent of land overlying aquifers consists of potentially drainable soils, so the maximum net percent of all potentially drainable lands that might be in conflict with ground water appropriators would be approximately 7 percent.

Using a 20th century participation distribution, tile drains would be estimated to flow in 15 percent to 35 percent of years. The actual percent would vary with tile depth and local crop, soil, and management conditions. The years in which tile drains would flow would be those with the most plentiful water, some of which would have excess water and flood conditions. Times of potential conflict with ground water appropriators are, thus, limited.

State Water Commission representatives reported that drainage usually is targeted to waterlogged areas. Natural recharge and discharge in areas of high water table overlying glacial aquifers is highly transitory. Most recharged waters in shallow water table areas are removed naturally through runoff or evaporation within one year or two years. Thus, most recharged waters are not available for long-term storage and use for appropriation and beneficial use in dry years. Because properly designed wells have deeper placement in an aquifer, these wells capture ground water more efficiently than tile drains, and, as a result, have the capability to dewater tile drains that may be competing with them.

State Water Commission representatives reported that tile drainage can cause a reduction in the saturated thickness of surficial unconfined aquifers which, in turn, may cause a small decrease in the pumping rate within nearby well fields. This would be significant only in areas of very thin aquifers. Thin surficial aquifers would be a poor choice of location for a high-capacity well field.

State Water Commission representatives reported that in most cases, even in thin aquifer areas, small

effects on prior appropriators caused by decreased saturated thickness could be offset by constructing additional efficiently designed wells. In the specific case of the Traill Rural Water District, the maximum estimated effect of large-scale tile drainage near the well field on pumping capacity from the well field would be less than 2 percent.

State Water Commission representatives reported the only law relating to water appropriation and subsurface drainage in states neighboring North Dakota is a specific exemption of tile drainage from requiring a water permit in Minnesota.

Recommendation

State Water Commission representatives reported the potential negative effects of tile drainage on prior ground water appropriators using wells are limited to rare circumstances and are small and potentially remediable when and where they may occur. The commission recommends no changes in state law regarding potential conflicts between the beneficial use of water by prior appropriators and tile drainage.

STATE WATER COMMISSION OPERATION AND PROCEDURES REVIEW

The chairman of the Legislative Council directed that the committee review State Water Commission operations and procedures.

The State Engineer reported that developing the State Water Commission's budget is a complex process beginning several months before a legislative session. The budget request submitted to the Governor is developed with input from many sources. Revenue projections prepared by the Office of Management and Budget are the basis for much of the budget. These revenues include general funds, the resources trust fund, water development trust fund, federal funds, local funds, and miscellaneous revenues. A combination of these funds makes up the base budget, and the funds available for water projects often are determined after subtracting the cost of agency operations from total revenues. The funds for individual projects are normally not listed by line item, but the larger projects are detailed in a narrative.

The State Engineer reported that part of the budget process includes contact with water stakeholders by commission staff for identification of funding needs during an upcoming legislative session. This information is compiled in a biennial update report to the state water management plan. Because the total funding needs listed in the report often exceed the funds available, project prioritization is necessary. The State Engineer reported that the North Dakota Water Coalition provides a convenient and efficient mechanism for obtaining this input by bringing the various water groups together in one place. This allows stakeholders to learn about other projects and also allows important dialogue between project sponsors. The water coalition attempts to reach a consensus for prioritizing funding, but the commission has final approval of the distribution of funds. During the commission's budget hearing, the water coalition's recommendations are provided, but the budget approved by the Legislative Assembly generally only lists a total amount for all projects. This allows the commission to make adjustments during a biennium based on how fast or slow individual projects are progressing.

Concerning assistance to project sponsors in the permitting and construction process, the State Engineer reported that if a project sponsor employs its own engineer the commission does not get involved directly in construction and project management. If the commission does the engineering it is involved in all phases of development. Commission engineers usually inspect projects completed by local entities. Commission staff are directly involved in the permitting process if the permits are issued by the State Engineer. If it is appropriate and necessary, the commission provides limited assistance or advice in obtaining federal permits or permits from other entities. However, obtaining required permits is primarily the responsibility of a local project sponsor as it is the owner of the project.

Concerning urban and rural funding issues and commission cost-sharing policies and rules, the State Engineer reported that the commission has a standing committee that periodically reviews cost-share policies and processes. This committee holds publicized meetings to facilitate public involvement and to explore ways to improve the commission's responsiveness to project sponsors in meeting the full range of development needs. Commission staff makes every effort to consistently apply these policies as it processes funding requests and makes recommendations to the commission. The commission's cost-share policies have evolved to comply with changes in development needs and available funding.

Concerning the relationship and involvement of the State Water Commission with the Red River Valley Water Supply Project, the State Engineer reported that the commission is supportive of the Garrison Diversion Conservancy District as the entity designated by the Governor and the Legislative Assembly as the state's lead authority for the Red River Valley Water Supply Project. The Garrison Diversion Conservancy District and the State Water Commission undertake a significant amount of coordination in the project.

Indemnification Issue

The committee learned that the State Water Commission has had an indemnification clause in its contracts for years which local political subdivisions signed without an insurance endorsement. The Attorney General has recommended that an insurance endorsement should be included for the life of a project. This was recommended because a commitment to indemnify is not sufficient unless there are funds to fulfill the commitment. Because political subdivisions, particularly water resource districts, do not have much in the way of assets, an insurance policy provides security to make the indemnification valid. The North Dakota Insurance Reserve Fund, however, declined to offer the endorsement and, thus, many water projects were on hold pending resolution of this issue.

The State Engineer reported that the issue stems, in part, from the Devils Lake landowners' lawsuit in which landowners around Devils Lake sued the state and county water resource districts claiming inverse condemnation of their property due to flooding allegedly caused by water projects built in the Devils Lake Basin. The state was named as a defendant in the lawsuit because of its partial financial assistance for construction of many of the projects and postconstruction regulation of these projects. Although the state loosely participated in many of the projects, at no point did the state assume ownership beyond its regulatory authority. Although the state and local water resource district boards prevailed at the district court level, the plaintiffs have appealed the district court decision to the Supreme Court. The State Water Commission, Attorney General, and the North Dakota Insurance Reserve Fund have spent over $1 million defending this lawsuit and the State Engineer reported that plaintiffs have suggested it would require $25 million to settle the case. The State Engineer reported that whether the state prevails in the case, it exposed liability issues for any water project in which the state has even a minimal relationship or role.

The State Engineer reported that on April 23, 2008, the State Water Commission approved an interim, possibly long-term, solution to the liability and indemnification issue regarding state cost-share contracts with local political subdivisions for water projects. This agreement was developed following considerable discussion between the State Water Commission, the Attorney General, the Risk Management Division of the Office of Management and Budget, the North Dakota Insurance Reserve Fund, and representatives of local political subdivisions. The State Engineer reported that the commission would require only an endorsement for the construction period of a project. The North Dakota Insurance Reserve Fund has agreed to provide this endorsement. The State Engineer reported that the commission will continue to require full indemnification from project owners without an insurance endorsement beyond the construction phase of the project. The State Engineer reported that the commission is entering agreements with political subdivisions and will use the new indemnification clause at least through the upcoming legislative session during which the Legislative Assembly may wish to review this issue.

RED RIVER VALLEY WATER SUPPLY PROJECT BONDS

The chairman of the Legislative Council directed that the committee receive periodic reports from the State Water Commission regarding the implementation of 2007 Session Laws Chapter 559. Chapter 559 authorizes the commission to provide $40 million of the nonfederal share of funds necessary to construct the Red River Valley Water Supply Project by issuing bonds not to exceed $40 million plus the cost of issuance of the bonds, capitalized interest, and reasonably required reserves. The principal and interest on the bonds issued for the project are payable from the water development trust fund from funds transferred from the tobacco settlement trust fund. The remaining $60 million, to comprise a total of $100 million to meet the $100 million state share of Phase 1 of the project, is to be funded over three bienniums. The $60 million is to be derived from $30 million from the general fund and $30 million from the resources trust fund. The state is to provide an additional $100 million of municipal, rural, and industrial water supply funds for Phase 2 of the Red River Valley Water Supply Project to meet the $200 million state share of the project.

The State Engineer reported that the Red River Valley Water Supply Project is in the environmental impact statement process phase of development. After the environmental impact statement process is complete, the project must then be approved by Congress because the preferred alternative for water delivery involves the use of Missouri River water. As a result, the State Engineer reported that it is not anticipated there will be a need for the issuance of bonds in the 2007-09 biennium. However, the State Engineer reported that its bond counsel believes the state will have to pledge additional sources of revenues before these bonds may be issued. Thus, the Legislative Assembly may need to address some changes to the authorization legislation during the 2009 legislative session.

RED RIVER BASIN MAPPING INITIATIVE

The chairman of the Legislative Council directed that the committee receive periodic reports on the development of the digital elevation models for the Red River Basin. The committee learned that highly accurate digital elevation models and associated imagery are essential to improving disaster preparedness, protecting existing infrastructure, evaluating and planning flood and drought damage mitigation projects, enhancing agricultural production, and strengthening decisionmaking capacity at all levels of government. Current technology allows for efficient collection and processing of digital elevation model data across large land areas through the use of airborne light detection and ranging laser and global positioning system technologies and digital photography platforms. The objectives of the Red River Basin mapping initiative are to collect high-resolution elevation data, to establish third party quality assurance and quality control, to establish a web-based public data archival dissemination vehicle, and to promote public outreach. The benefits of the project include benefits to agriculture and precision farming, water resource management and decisionmaking, utilities management, pre-D modeling, civil works planning and development, conflict resolution, resource monitoring and assessment, and problem identification. The goal of the Red River Basin mapping initiative project is a basinwide elevation model and, even though surveys will be taken at different seasons and different years, the model should be seamless. The committee learned that the two major challenges for the program are coordination of the funding partners and the securing of a nonfederal match from local project sponsors.

PUBLIC SAFETY COMMITTEE

The Public Safety Committee was assigned the following responsibilities:

1. A study of the state's emergency medical services (EMS) system, including the funding, demographics, and impact on rural areas pursuant to Section 8 of House Bill No. 1004 (2007).
2. Receive a report from the State Health Officer before July 1, 2008, regarding the outcome and recommendations of the Health Council's study of minimum requirements of reasonable EMS coverage pursuant to subsection 1 of Section 2 of House Bill No. 1162 (2007).
3. Receive a report from the State Health Officer before July 1, 2008, on the findings and recommendations of the State Department of Health's contractor's evaluation of the state's trauma system and the department's responses and proposed responses to the recommendations pursuant to subsection 4 of Section 1 of House Bill No. 1290 (2007).
4. Receive a report from the State Department of Health by July 1, 2008, regarding the findings of the department's contractor's assessment of the state's EMS system pursuant to Section 4 of House Bill No. 1296 (2007).
5. A study of the Department of Emergency Services, including the Division of Homeland Security and the Division of State Radio, including a review of the allocation of federal homeland security funding, the operation of State Radio, and potential changes to the 911 fee structure to continue salary equity funding provided in the 2007-09 biennium pursuant to Section 8 of Senate Bill No. 2016 (2007).
6. A study of the delivery and funding of veterans' services by the state and counties pursuant to House Concurrent Resolution No. 3063 (2007).
7. Approve any agreement between a North Dakota state entity and the state of South Dakota to form a bistate authority pursuant to North Dakota Century Code (NDCC) Section 54-40-01.

Committee members were Representatives Todd Porter (Chairman), Randy Boehning, Mike Brandenburg, Ron Carlisle, Edmund Gruchalla, Pam Gulleson, James Kerzman, Joe Kroeber, Bob Martinson, Vonnie Pietsch, Clara Sue Price, and Don Vigesaa and Senators Joan Heckaman, Ralph L, Kilzer, Gary A. Lee, Elroy N. Lindaas, and John M. Warner.

The committee submitted this report to the Legislative Council at the biennial meeting of the Council in November 2008. The Council accepted the report for submission to the 61st Legislative Assembly.

STUDY OF EMERGENCY MEDICAL SERVICES

The Public Safety Committee was assigned various responsibilities relating to EMS provided within North Dakota. These responsibilities include:

- A study of the state's EMS system, including the funding, demographics, and impact on rural areas pursuant to Section 8 of House Bill No. 1004 (2007).
- Receive a report from the State Health Officer before July 1, 2008, regarding the outcome and recommendations of the Health Council's study of minimum requirements of reasonable EMS coverage pursuant to subsection 1 of Section 2 of House Bill No. 1162 (2007).
- Receive a report from the State Health Officer before July 1, 2008, on the findings and recommendations of the State Department of Health's contractor's evaluation of the state's trauma system and the department's responses and proposed responses to the recommendations pursuant to subsection 4 of Section 1 of House Bill No. 1290 (2007).
- Receive a report from the State Department of Health by July 1, 2008, regarding the findings of the department's contractor's assessment of the state's EMS system pursuant to Section 4 of House Bill No. 1296 (2007).

Background Information

Emergency Medical Services

North Dakota Century Code Chapter 23-27 defines "emergency medical services" as the prehospital medical stabilization and transportation of individuals who are sick, injured, wounded, or otherwise incapacitated or helpless by EMS personnel with physician oversight. The term includes assessing, stabilizing, and treating life-threatening and non-life-threatening medical conditions.

Emergency Medical Services Licensing

The State Department of Health is responsible for licensing EMS operations. North Dakota Century Code Section 23-27-03 provides that the fee to operate an EMS operation or a substation ambulance services operation must be set by the Health Council at a sum not to exceed $25 annually. The current annual license fee is $25 and is used to defray the costs of administration of the licensing program. All license fees must be paid to the State Department of Health and deposited with the State Treasurer and credited to the state general fund. Emergency medical services personnel are not subject to a license fee.

The Health Council is responsible for establishing rules for licensure. These rules must include:

- Time when operator's services must be available.
- Type of motor vehicle operator's license needed for drivers of ground vehicles.

- Training standards for operating personnel.
- Equipment and ground vehicle standards.
- Number of personnel required for each run.
- Other requirements as may be found necessary.

Emergency Medical Services Training and Certification

North Dakota Century Code Section 23-27-04.2 requires the State Department of Health to assist in the training of EMS personnel and to financially assist certain EMS operations in obtaining equipment. The legislative history indicates personnel training services must be met before the department may financially assist ambulance units in obtaining equipment. This section provides:

- Assistance provided must be within the limits of legislative appropriation.
- The department is to adopt eligibility criteria for assistance in the training of EMS personnel.
- To qualify for financial assistance for equipment, an EMS operation is to certify, in the manner required by the department, that the operation has 50 percent of the amount of funds necessary for identified equipment acquisitions.
- The department is to adopt a schedule of eligibility for financial assistance for equipment.
- The department may establish minimum and maximum amounts of financial assistance to be provided to an EMS operation. If applications for financial assistance exceed the amount of allocated and available funds, the department may prorate the funds among the applicants in accordance with criteria developed by the department.
- No more than one-half of the funds appropriated by the Legislative Assembly each biennium and allocated for training assistance may be distributed in the first year of the biennium.

North Dakota Century Code Section 23-27-04.3 requires the Health Council to adopt rules prescribing minimum training, testing, certification, licensure, and quality review standards for EMS personnel, instructors, and training institutions. Rules adopted must:

- Define minimum applicable standards.
- Define EMS personnel.
- Provide for a mechanism for certifying or licensing persons who have met the required standards.
- Provide a mechanism to review and improve the quality of care rendered by EMS personnel.
- Define minimum standards for EMS training institutions.

Emergency Medical Services Funding Sources

The 2001 Legislative Assembly approved House Bill No. 1405, which increased the maximum mill levy rate for ambulance services from 5 mills to 10 mills. The Century Code references relating to property tax rates for ambulance services include:

County - Section 57-15-06.7(23) provides that a county may levy a tax of up to 10 mills for county EMS.

Township - Section 57-15-20.2(7) provides that a township may levy a tax of up to 10 mills for EMS.

Rural ambulance service districts - Pursuant to Section 57-15-26.5, a rural ambulance service district may levy a tax not exceeding 10 mills on the taxable value of property within the district.

City - Pursuant to Section 57-15-51, a city may impose a levy of up to 10 mills upon its taxable valuation for the purpose of subsidizing city EMS. Whenever a tax for county EMS is levied, any city levying a tax for EMS may be exempted from the county tax levy.

Other sources of revenues for ambulance services include donations; federal funds; state grants and user fees, including insurance; and Medicare and Medicaid reimbursement.

Quick Response Units

Quick response units are organizations that provide care to patients while an ambulance is enroute to the scene of an emergency. Quick response units may be part of a law enforcement agency, a fire department, or a stand-alone agency whose only purpose is to provide quick response services. North Dakota Century Code Section 23-27-04.6 provides that State Department of Health licensure or certification as a quick response unit is optional. The State Department of Health has established a voluntary certification program in response to requests from providers to establish standards.

North Dakota Trauma System

North Dakota Administrative Code Section 33-38-01-01 defines "trauma" as tissue damage caused by the transfer of thermal, mechanical, electrical, or chemical energy or by the absence of heat or oxygen. A "trauma center" is defined as a facility that has made a commitment to serve the trauma patient, has met the standards of the trauma system, and has obtained designation as a trauma center.

The State Department of Health, under the auspices of the Health Council, maintains the North Dakota trauma system. The North Dakota trauma system began in 1993 with the development of a trauma system plan that identified the need for an organized trauma system for the state. The 1995 Legislative Assembly approved House Bill No. 1318, which appropriated $100,000 to the State Department of Health for development of a comprehensive trauma and emergency medical system, including:

1. A State Trauma Committee and regional trauma committees.
2. A trauma designation system.
3. A statewide trauma registry system with a quality improvement process.
4. Prehospital trauma transport plans.

The North Dakota trauma system is an integrated comprehensive system designed to be inclusive to all health care providers in the state. The trauma system provides a state of readiness or a preplanned response for care of the injured victim. This response requires an entire spectrum of care delivery, from injury prevention to prehospital, hospital, and rehabilitative care.

North Dakota Administrative Code Section 33-38-01-06 provides five levels of trauma center designation for hospitals. Trauma center designations are based upon American College of Surgeons standards, with the Level I designation being the highest standard level.

Emergency Services Personnel

The committee received information from representatives of the State Department of Health regarding training and certification for emergency services personnel. The committee learned North Dakota has five levels of training for emergency services personnel--first responder, emergency medical technician (EMT), EMT intermediate '85, EMT intermediate '99, and paramedic. The state also has different scope enhancement courses that individuals may take to supplement their training, including emergency vehicle operations, emergency medical dispatch, automobile extrication, manual defibrillation, intravenous maintenance, flight medical crew, epinephrine administration, dextrose administration, bronchodilator administration, and multilumen airway insertion. The following is a summary of emergency services personnel certification or licensure requirements and recertification or relicensure requirements:

Emergency Services Personnel	Certification or Licensure Requirements	Recertification or Relicensure Requirements
First responder	Complete a 40-hour course and pass a local written test and practical test	Complete a 16-hour refresher course
EMT	Complete 110 hours of classroom instruction and pass a national written test and practical test	Option 1 - Complete a 24-hour refresher course with an additional 48 hours of continuing education Option 2 - Pass a cognitive knowledge test Option 3 (proposed) - Pass a practical test
EMT intermediate '85	Hold a valid EMT license, complete 100 training hours, and pass a national written test and practical test	Option 1 - Complete a 36-hour refresher course with an additional 36 hours of continuing education Option 2 - Pass a cognitive knowledge test
EMT intermediate '99	Hold a valid EMT license, complete 300 training hours, and pass a national written test and practical test	Option 1 - Complete a 36-hour refresher course with an additional 36 hours of continuing education Option 2 - Pass a cognitive knowledge test
Paramedic	Hold a valid EMT license, complete a 1,200-hour course, and pass a national written test and practical test	Option 1 - Complete a 48-hour refresher course with an additional 24 hours of continuing education Option 2 - Pass a cognitive knowledge test

Law Enforcement Personnel

The committee received information regarding law enforcement emergency medical training and learned all peace officers are required to complete first aid and cardiopulmonary resuscitation (CPR) training as part of their basic training. During the 1980s and early 1990s, peace officers were provided first responder training; however, the training was reduced to 16 hours of first aid and CPR training because of other training needs. Currently, Highway Patrol troopers receive first responder training and are certified every two years in order to maintain their first responder certification.

Emergency Medical Services Operations Grant Program

The committee learned House Bill No. 1296 (2007) appropriated $1,250,000 from the insurance tax distribution fund to the State Department of Health for providing grants for EMS operations. The funding is to provide assistance to ambulance services with staffing needs. The State Department of Health promulgated rules and developed a grant application process for 108 of the state's 141 licensed ambulance services that were identified by the department as being "access critical." The following is a summary of the grant awards for the first year of the 2007-09 biennium:

Ambulance Service	Award Amount	Project Description
New England Ambulance Services	$22,176	Hire EMT for summer months
Westhope Ambulance Service	44,176	Hire full-time EMT and paid oncall time for volunteers
Medina Ambulance Service	44,935	Paid oncall time and run pay
Maddock Ambulance Service	39,124	Contract for EMT coverage
Turtle Lake Ambulance Service	25,230	Part-time manager, paid oncall time, and run pay
Kindred Area Ambulance Service	45,000	Paid oncall time and contract for EMT coverage as needed
Grenora Ambulance Service	45,000	Contract for EMT coverage
Kidder County Ambulance	27,496	Paid oncall time and run pay
McKenzie County Ambulance	44,692	Hire two part-time EMTs for weekend coverage, paid oncall time for volunteers, and part-time office person
Divide County Ambulance District	36,522	Paid oncall time
Wilton Rural Ambulance District	31,824	Paid oncall time
Gackle Ambulance Service	37,630	Hire part-time EMT for weekend coverage, oncall pay for volunteers, and run pay
Sargent County Ambulance - Forman	43,056	Paid oncall time
Wing Rural Ambulance	20,429	Paid oncall time and part-time office staff
Napoleon Ambulance Service	24,809	Paid oncall time, run pay, and part-time office person
Lidgerwood Ambulance Service	32,440	Paid oncall time and run pay
Richardton-Taylor Ambulance Service	21,326	Paid oncall time, offer incentive pay to join service, and part-time office staff
Mohall Ambulance Service	29,458	Hire two part-time EMTs, paid oncall time for volunteers, run pay, and part-time office staff

Ambulance Service	Award Amount	Project Description
Wishek Ambulance Service	14,120	Hire part-time EMT and paid oncall time
Page Ambulance Service	10,753	Paid oncall time, run pay, and paid administrative duties
Bowdon Ambulance Service	16,488	Paid oncall time and one part-time office staff
McVille Ambulance Service	26,645	Paid oncall time and run pay
Bowman Ambulance Service	36,718	Hire two full-time paramedics
Sargent County Ambulance - Milnor	6,240	Weekend paid oncall time
Community Volunteer EMS of LaMoure	3,640	Paid oncall time
West River Ambulance	8,320	Hire full-time EMT
Velva Ambulance Service	23,088	Paid oncall time and part-time ambulance coordinator
Emmons County Advanced Life Support Ambulance	6,240	Hire full-time EMT
Northwood Ambulance Service	18,200	Hire full-time paramedic
Casselton Ambulance Service	15,725	Paid oncall time
Hillsboro Ambulance Service	14,801	Hire part-time weekend EMT and oncall time for volunteers
Rock Lake Ambulance Service	7,800	Paid oncall time
Total	$824,101	

The State Department of Health will have another grant application period in November 2008.

Study of Minimum Requirements of Reasonable Emergency Medical Services Coverage

The committee learned House Bill No. 1162 (2007) provides that the Health Council is to study the minimum requirements of reasonable EMS coverage taking into consideration the response time for EMS. In response to the study, the State Department of Health determined the following controllable factors affect reasonable EMS response coverage:

- Access to the EMS system.
- Emergency medical dispatch.
- Time from EMS notification to arrival on scene.

The committee learned the 911 system has been approved by every county in the state and is operational in all but Rolette County, which is in the process of implementing a 911 system. Not all ambulance services have updated their dispatching process over the years. Some ambulance services do not use a radio or pager dispatch system, and some ambulance services use a third party, such as a hospital or nursing home, to page the ambulance. The department's recommendations to improve access to the EMS system are:

- Require through administrative rules that EMS agencies be dispatched directly by a public safety answering point by radio or pager.
- Require through administrative rules that EMS agencies have scheduled personnel oncall at all times.

The committee learned NDCC Section 57-40.6-10(9) requires that every person who answers emergency 911 calls be trained in emergency medical dispatch and that every public safety answering point offer prearrival instructions. The department's recommendations to improve emergency medical dispatch are:

- Establish in statute or rule a requirement that ambulance services have affirmative communications (hand-held radios) capable of communicating with each other and dispatch if they intend to respond with a fragmented crew.
- Require public safety answering points to automatically dispatch the local EMS that serves the area. If the local ambulance provided is licensed at the basic life support level, the public safety answering points must also dispatch an advanced life support ambulance service if the patient has major trauma, cardiac chest pain or acute myocardial infarction, cardiac arrest, or severe respiratory distress or respiratory arrest.
- Require a helicopter air ambulance to be dispatched if the incident occurs more than 20 miles from a helicopter air ambulance base of operations but not more than 100 miles, and if the following conditions exist: prolonged extrication time, multiple victims, ejection from vehicle, pedestrian or bicycle struck by a vehicle traveling more than 20 miles per hour, burns covering more than 10 percent of the victim's body, or stroke symptoms.
- Provide statutory authority to the State Department of Health to establish these regulations for public safety answering points through administrative rules.
- Study the issue of dispatching multiple ground transporting agencies to determine an equitable process to alleviate "unfunded" ambulance transports.

The committee learned the department has determined that the response time measurement should be divided into two segments--time from dispatch to time of EMS en route and time en route to time on scene. Standards for the response time need to consider population density and hospital location. The department's recommendations in the area of response time are:

- Cities with a hospital must have an ambulance service.
- Cities with a population of at least 1,000 that are more than 15 miles from another city of 1,000 must have an ambulance. Cities with a population of 500 to 999 and that are fewer than 25 miles from an ambulance must have an EMS agency. Gaps in coverage will need to be addressed on an individual basis by using the "access critical" ambulance service criteria.
- Establish in administrative rules that urban ambulance services must have a response time standard of arriving on scene in less than nine minutes 90 percent of the time.
- Establish in administrative rules that rural and transportation corridor ambulance services must

have an en route time of 10 minutes or less 90 percent of the time and an overall response time of less than 20 minutes 90 percent of the time.

- Establish in administrative rules that frontier ambulance services must have an en route time of 10 minutes or less 90 percent of the time and an overall response time of less than 30 minutes 90 percent of the time.

Evaluation of the State's Trauma System

The committee learned the 2007 Legislative Assembly approved House Bill No. 1290, which appropriated $100,000, of which $75,000 was from the health care trust fund and $25,000 was from gifts, grants, or donations, to the State Department of Health for contracting with a professional organization to perform an evaluation of the trauma system in the state. The evaluation was to include a comprehensive onsite review by a multidisciplinary team, a critical analysis of the current state trauma system, the state trauma system's interrelationship with the state's emergency management system and with homeland security all-hazard planning and program efforts, and recommendations for improvements and enhancements.

The committee learned the department contracted with the American College of Surgeons to perform the evaluation. The American College of Surgeons conducted an evaluation of the state's trauma system in April 2008. The assessment team focused on 18 essential components involved in a trauma system and held dialogues and briefings with key trauma stakeholders across the state. The evaluation team developed a report with numerous recommendations. The following is a summary of the recommendations:

Area	Recommendations
Injury epidemiology	Seek legislation to establish a statewide collection of hospital discharge data with E-codes Identify resources to increase the availability of epidemiology support for a statewide injury program Develop a comprehensive approach to injury assessment Provide funding for the injury prevention program director to seek additional injury prevention and control education
Statutory authority and administrative rules	Modify Level V trauma center criteria to ensure that all facilities can legitimately achieve and maintain verification at this level Include trauma system participation at a level consistent with their resources and capabilities for all primary care or general acute hospitals as a condition of state licensure Task a committee comprised of representatives of both the State Trauma Committee and the EMS Advisory Committee to conduct a detailed review of all regulations pertaining to trauma and EMS, to consider the rules changes recommended, and to identify any additional regulation modifications that might be necessary Conduct a periodic review of all statutes, rules, and regulations pertaining to trauma and EMS to ensure that they are current
System leadership	Strengthen the State Trauma Committee to enable it to assume its role as the lead advisory body for the trauma system In absence of a state medical director, provide medical direction through a technical advisory group comprised of trauma center directors Structure and empower regions to lead implementation of the state trauma plan at a regional level
Coalition building and community support	Review the membership of the State Trauma Committee and consider partnering with other community leaders representing the media, health plans, payers, and industry who can further advocate for injury prevention and control and ongoing trauma system development Expand opportunities for stakeholders to participate in trauma system development by creating technical advisory groups that function under the direction of the State Trauma Committee Obtain a rules change to convert ad hoc members to voting members
Lead agency and human resources within the lead agency	The State Department of Health, Division of Emergency Medical Services, and State Trauma Committee should evaluate the recommendations contained in this report and the National Highway Traffic Safety Administration recommendations to identify focus areas for attention and develop a funding and staffing plan. Acquire personnel and additional funding for the state office to support the current staff needs to implement the North Dakota trauma system Identify a state EMS medical director Consider renaming the Division of Emergency Medical Services to incorporate trauma into the division title Create strong ties with the injury prevention program within the State Department of Health and support each other's programs within the state system of resource allocation Create stronger ties with the Center for Rural Health to support research and data analysis in addition to the current use of flex grants for hospital training Work more closely with the University of North Dakota and North Dakota State University to maximize data analysis efforts as well as training opportunities
Trauma system plan	Update and modify the state trauma plan bringing it up to current standards

Area	Recommendations
System	Develop a process for integration with the disaster preparedness infrastructure, including reciprocal committee membership and mutual plan development
	Develop a process for integration with the injury and violence coalition and develop a shared vision integration and plan
	Develop a process for integration with rural health and critical access hospital programs to optimize resource sharing, particularly in the areas of staffing, data collection, and quality assurance
	Develop a process for integration with other public health and safety services, including mental health, social services, transportation, fire, and law enforcement, to facilitate resource sharing
Financing	Acquire dedicated funding for additional positions needed to manage the trauma program
	Acquire dedicated funding for an EMS medical director
	Acquire one-time funding for an epidemiology consultant and fixing the state trauma registry
	Create a trauma unit within the Division of Emergency Medical Services that has staff supervision responsibilities for the state trauma manager to manage the elements of the trauma system
	Develop mechanisms for the collection of trauma payer data
Prevention and outreach	Develop an implementation guide for the injury prevention plan that clarifies the role of trauma centers and other stakeholders as partners in the implementation process
	Strengthen the relationship between the trauma system program and the injury prevention program, promoting a partnership that permits the injury prevention program to serve as the prevention arm of the trauma system
	Seek a State and Territorial Injury Prevention Directors Association technical assessment or consultation in preparation for seeking a Centers for Disease Control and Prevention injury capacity-building grant
	Develop a resource collection of evaluated and effective injury prevention programs for use by stakeholders
Definitive care facilities	Mandate the participation of all primary care and general acute care hospitals in the trauma system and tie this requirement to hospital licensure
	Develop a memorandum of understanding between the State Department of Health and the designated trauma centers outlining roles and responsibilities
	Conduct an inventory of trauma centers' programs and services to direct triage and patient flow
	Develop interfacility transfer criteria to ensure that patients with specialized needs are sent to facilities with matching resources
	Facilitate access to educational opportunities through investments in novel approaches to learning
	Review pediatric trauma care to assess the possibility of establishing an American College of Surgeons-verified Level II pediatric trauma center
System coordination and patient flow	Conduct an inventory of all trauma centers' programs and services to direct triage and patient flow
	Develop interfacility transfer criteria to ensure that patients with specialized needs are sent to facilities with matching resources
	Develop advanced life support intercept protocols
	Determine the impact on the appropriate utilization of advanced life support intercepts by basic life support services due to potential financial disincentives
	Evaluate the need and feasibility for expanding air medical coverage for the state
	Develop critical care ground transport capability
	Develop dispatch criteria and protocols to expedite rotor wing ambulance and ground advanced life support injury scene response and intercept in interfacility transfer
Rehabilitation	Functionally integrate rehabilitation into trauma system development
	Conduct a resource assessment of specialized rehabilitation services to identify what state or regional resources are available
	Develop criteria for interfacility transfer to rehabilitation centers to ensure access to specialized services when necessary
	Link data between trauma registries and rehabilitation centers to provide information regarding patient access and outcomes
Disaster preparedness	Provide training for all trauma system health care providers from an all-hazards approach
	Maximize interaction between the trauma and EMS community and the emergency preparedness community at all levels to optimize disaster preparedness
Systemwide evaluation and quality assurance	Develop a trauma system performance improvement plan and start with simple screens
	Establish clear guidelines that describe the expectations of the regional committees for peer review and patient outcomes
	Appoint a performance improvement technical advisory group to initiate quarterly meetings designed to review specific key measures and case reviews to identify opportunities for improving care
	Develop guidelines and a mechanism for the regions and state to gain concurrent information on significant trauma system and patient care issues
	Consider having the state trauma manager make occasional visits to the trauma centers each year to assess any trauma system or patient care concerns

Area	Recommendations
	Utilize the existing teleconferencing capabilities in the region for case review with a continuing medical education format to encourage attendance Consider hiring outside registry companies if filling local registrar positions becomes difficult
Trauma management information systems	Utilize existing registry data to its fullest extent Identify solutions to improve the current data system Improve access to and the quality of UB-92 data Explore all existing datasets for information that may be useful in the planning, development, and evaluation of the trauma system
Research	Engage the general medical community in the development of an agenda to identify the strategic priorities in injury research Encourage researchers within local academic centers to present new research findings at state trauma conferences to foster the development of academic-community partnerships Perform data linkage across datasets at the state level to facilitate evaluation of the continuum of care

The committee learned the State Trauma Committee met on July 23, 2008, to prioritize the recommendations from the evaluation. The State Trauma Committee determined that 21 of the recommendations should be implemented within the next two years. The following are five priority recommendations identified by the State Trauma Committee that need legislative action to implement and are not in ranked order:

1. Mandate the participation of all primary care and general acute care hospitals in the trauma system and make this a requirement of hospital licensure.
2. Provide the Division of Emergency Medical Services with personnel and additional funding to support the current staffing and program needs to implement the state trauma system. This would include a full-time associate trauma coordinator, a half-time EMS/trauma medical director, and a half-time administrative assistant.
3. Require licensure of all quick response units.
4. Update and modify the state trauma plan to meet current standards.
5. Determine the impact on the appropriate utilization of advanced life support intercepts by basic life support ambulance services due to potential financial disincentives.

The committee learned the following 16 recommendations were identified by the State Trauma Committee to be addressed in the next two years but do not require legislative action:

1. Develop dispatch criteria and protocols to expedite rotor wing ambulance and ground advanced life support injury scene response and intercept in interfacility transfer.
2. Create a committee comprised of representatives of both the State Trauma Committee and the EMS Advisory Committee to conduct a detailed review of all regulations pertaining to trauma and EMS, to consider the rules changes recommended, and to identify any additional regulation modifications that might be necessary.
3. Identify solutions to improve the current data system and utilize existing registry data to its fullest extent.
4. Explore all existing datasets of information that may be useful in the planning, development, and evaluation of the trauma system.
5. Expand opportunities for stakeholders to participate in trauma system development by creating technical advisory groups that function under the direction of the State Trauma Committee.
6. Establish clear guidelines that describe the expectations of the regional committees for peer review and patient outcomes.
7. Develop a trauma system performance improvement plan and start with simple screens.
8. Appoint a performance improvement technical advisory group to initiate quarterly meetings designed to review specific key measures and case reviews to identify opportunities for improving care.
9. Develop guidelines and a mechanism for the regions and the state to gain concurrent information about significant trauma system and patient care issues.
10. Utilize the existing teleconferencing capabilities in the regions for case review with a continuing medical education format to encourage attendance.
11. Consider having the state trauma manager make occasional visits to the trauma centers each year to assess any trauma system or patient care concerns.
12. Strengthen the relationship between the trauma system program and the injury prevention program, promoting a partnership that permits the injury prevention program to serve as the prevention arm of the trauma system.
13. Develop a process for integration with the disaster preparedness infrastructure, including reciprocal committee membership and mutual plan development.
14. Maximize interaction between the trauma and EMS community and the emergency preparedness community at all levels to optimize disaster preparedness.
15. Develop a process for integration with other public health and safety services, including mental health, social services, Department of

Transportation, fire, and law enforcement, to facilitate resource sharing.

16. Develop advanced life support intercept protocols.

Assessment of the State's Emergency Medical Services System

The committee learned the 2007 Legislative Assembly approved House Bill No. 1296, which appropriated $30,000 from the general fund to the State Department of Health for funding an assessment of the state's EMS system. The department contracted with the National Highway Traffic Safety Administration (NHTSA) Office of Emergency Medical Services to perform the assessment. The National Highway Traffic Safety Administration conducted its assessment on April 7-11, 2008. The assessment team focused on 10 national standards plus emergency preparedness. After hearing presentations regarding the state's EMS system from stakeholders from across the state, the NHTSA team compiled a report with recommendations in 11 categories. The following is a summary of the recommendations included in the report:

Category	Recommendations
Regulation and policy	The state should require mandatory licensing of quick response units.
	The EMS Advisory Committee should be formally recognized in statute or rule to include Emergency Medical Services for Children (EMSC) representation.
	The Division of Emergency Medical Services should facilitate a dialogue on the public's expectations for EMS and develop new EMS delivery models based on those expectations.
	The Division of Emergency Medical Services should formalize and update the ambulance inspection program to include technical assistance visits for quality improvement.
	The Legislative Assembly should provide funding for quality improvement coordinators who could work with local medical directors.
	The Legislative Assembly should provide funding for EMSC activities beyond the federal requirements.
	The Legislative Assembly should provide additional staff and financial support to the Division of Emergency Medical Services to work on these recommendations.
Resource management	The Legislative Assembly should provide the Division of Emergency Medical Services with financial and staffing resources to fully meet regulatory and programmatic responsibilities.
	The Division of Emergency Medical Services should update the state EMS plan and add a pediatric component.
	The Division of Emergency Medical Services should provide technical assistance tools to the provider community, including EMS management and budgeting courses, data analysis courses, and benchmarking courses.
Human resources and training	The Division of Emergency Medical Services should continue to implement the *EMS Agenda for the Future* and transition EMS personnel into the new levels defined in the National EMS Scope of Practice Model.
	The Division of Emergency Medical Services should expand the licensed training institution model.
	The Division of Emergency Medical Services should examine the initial and continuing education of EMS instructors to improve quality and uniformity of course delivery.
	The Division of Emergency Medical Services should consider a formal human resources needs assessment.
	The Division of Emergency Medical Services should enhance the listing of available courses on the division's website.
Transportation	The Division of Emergency Medical Services, with support from the Legislative Assembly, should increase the number of staff for ambulance inspections and technical assistance visits.
	The Legislative Assembly should require licensing of all quick response units and consider removing the 24 hours a day 7 days a week requirement for quick response units.
	The Division of Emergency Medical Services should develop protocols that facilitate appropriate use of advanced life support intercepts and helicopter response to emergencies.
	The Division of Emergency Medical Services should update the pediatric equipment list for ambulances.
	The Division of Emergency Medical Services should work with hospitals to develop a critical care ground transport network.
Facilities	The Legislative Assembly should make trauma designation mandatory for hospitals.
	The Division of Emergency Medical Services should update the trauma triage protocol to be consistent with current American College of Surgeons standards.
	The Division of Emergency Medical Services should continue to work with the North Dakota Healthcare Association.
	The Division of Emergency Medical Services should develop strategies to improve the trauma education of physicians, nurses, and midlevel providers in Level IV and Level V trauma centers.
	The Division of Emergency Medical Services should develop standards to ensure pediatric needs are met at each hospital.
Communications	The Division of Emergency Medical Services should enhance collaborations with public safety answering points for data sharing and monitoring EMS performance.

Category	Recommendations
	The Division of Emergency Medical Services should provide technical assistance for public safety answering point emergency medical dispatch activities. The Division of Emergency Medical Services should work with the Division of State Radio to ensure that the needs of the EMS community are represented when establishing communications interoperability. The Division of Emergency Medical Services should have direct representation on the committee addressing communications interoperability. The Division of Emergency Medical Services should have a communications chapter in the state EMS plan or have a separate EMS communications plan.
Public information, education, and prevention	The Division of Emergency Medical Services should provide resources for public information on EMS and injury prevention. The Division of Emergency Medical Services should provide public information, education, and prevention training at EMS conferences.
Medical direction	The Legislative Assembly should establish and provide funding for a state EMS medical director. The Division of Emergency Medical Services should develop and the Legislative Assembly should provide funding for regional EMS quality improvement specialists to assist local medical directors and ambulance services. The Division of Emergency Medical Services should ensure that every ambulance has access to online medical direction, which may involve the development of regional online medical direction centers. The Division of Emergency Medical Services and the state EMS director should collaborate with the EMS Medical Director Society and the North Dakota EMS Association to develop clinical performance indicators and monitor them statewide. The Division of Emergency Medical Services and the state EMS director should explore options to create incentives to recruit EMS directors and encourage active involvement in the EMS system, which may involve creation of regional models of medical direction.
Trauma systems	The Legislative Assembly should update the funding for trauma operations and staffing and create a .5 full-time equivalent (FTE) state trauma medical director position. The Division of Emergency Medical Services should purchase functional software for state trauma registry. The Division of Emergency Medical Services and the State Trauma Committee should develop a strategy for statewide trauma system quality improvement and update the state trauma system plan. The Division of Emergency Medical Services should reconcile the four hospital regions, four trauma regions, and the eight public health regions. The Division of Emergency Medical Services should discuss the use of military helicopter resources for special circumstance trauma patients. The Division of Emergency Medical Services should make use of the Federal Health Resources and Services Administration *Model Trauma System Planning and Development* document. The Division of Emergency Medical Services should change its name to more accurately reflect its breadth of responsibilities and should consider "Division of Emergency Medical Services and Trauma."
Evaluation	The Division of Emergency Medical Services should ensure that all EMS medical directors, ambulance managers, and EMS personnel fully understand the importance and capabilities of the statewide online ambulance reporting system. The Division of Emergency Medical Services should facilitate evaluation at the local levels. The Division of Emergency Medical Services should develop focused evaluation projects, including the utilization of tracer conditions. The Division of Emergency Medical Services should ensure that EMS providers enter data in the statewide online ambulance reporting system within a defined period after an EMS event. The Division of Emergency Medical Services should establish specific goals and timelines with regard to its efforts to evaluate EMS structures, processes, and outcomes throughout North Dakota. The Division of Emergency Medical Services and local EMS providers should use evaluation results to modify resource allocation, plan education programs, and educate policymakers and lawmakers, other health care workers, other EMS providers, and the public.
Emergency preparedness	The State Department of Health should verify the surge capacity of hospitals and EMS through an ongoing exercise program. The Division of Emergency Medical Services, the State Department of Health, and the North Dakota EMS Association should integrate EMS into other emergency planning and preparedness activities.

The committee learned the EMS Advisory Committee met on July 28, 2008, to prioritize the recommendations from the evaluation. The advisory committee determined that 16 of the recommendations should be implemented within the next two years. The following are six priority recommendations identified by the EMS Advisory Committee that need legislative action to implement and are in ranked order:

1. The Legislative Assembly should provide funding for quality improvement coordinators who could work with local medical directors and ambulance services.

2. The Legislative Assembly should require licensing of all quick response units and consider removing the 24 hours a day 7 days a week requirement for quick response units.
3. The Legislative Assembly should make trauma designation mandatory for hospitals.
4. The State Department of Health Division of Emergency Medical Services should purchase functional software for state trauma registry.
5. The Legislative Assembly should establish and provide funding for a state EMS/trauma medical director.
6. The EMS Advisory Committee should be formally recognized in statute or rule to include EMSC representation.

The committee learned the following 10 recommendations were identified by the EMS Advisory Committee to be addressed in the next two years but do not require legislative action:

1. The Division of Emergency Medical Services should update the state EMS plan and add a pediatric component.
2. The Division of Emergency Medical Services should examine the initial and continuing education of EMS instructors to improve quality and uniformity of course delivery.
3. The Division of Emergency Medical Services should update the pediatric equipment list for ambulances.
4. The Division of Emergency Medical Services should update the trauma triage protocol to be consistent with current American College of Surgeons standards.
5. The Division of Emergency Medical Services should enhance collaborations with public safety answering points for data sharing and monitoring of EMS performance and have direct representation on Division of State Radio planning committees.
6. The Division of Emergency Medical Services should have a communications chapter in the state EMS plan or have a separate EMS communications plan.
7. The Division of Emergency Medical Services and the State Trauma Committee should develop a strategy for statewide trauma system quality improvement and update the state trauma system plan.
8. The Division of Emergency Medical Services should change its name to more accurately reflect its breadth of responsibilities and should consider "Division of Emergency Medical Services and Trauma."
9. The Division of Emergency Medical Services should facilitate evaluation at the local levels.
10. The Division of Emergency Medical Services should develop focused evaluation projects, including the utilization of tracer conditions.

North Dakota EMS Association

The committee received information from the North Dakota EMS Association regarding proposed changes to the state's EMS system. The association suggested the committee recommend providing $4,524,000 of additional funding for the EMS operations grant program established by the 2007 Legislative Assembly and expand the program to provide:

- An assessment process that would consist of a group of peers assessing EMS systems' structures, establishing EMS systems' goals, and assisting EMS systems with accomplishing their goals.
- Leadership training to all EMS managers and educators, including a stipend and expense reimbursement of lodging, meals, and mileage for all participants.
- An annual statewide recruitment drive to assist rural ambulance services experiencing difficulties recruiting staff.

The committee learned the association is concerned with specialty transportation. The definition of EMS was changed by the 2007 Legislative Assembly which resulted in the loss of the State Department of Health's authority to regulate wheelchair vans and no-care stretcher vans. The association suggested the committee recommend restoring the State Department of Health regulatory authority over specialty transportation.

The association also suggested the committee recommend that NDCC Section 23-27-04.7 be amended to provide that ambulance services operating in a taxing district receive a portion of tax revenue determined by the amount of mills collected in the townships covered by ambulance services.

Committee Recommendations

The committee recommends Senate Bill No. 2047 to provide a $128,400 general fund appropriation to the State Department of Health for providing emergency training grants to rural law enforcement officers and individuals choosing to become licensed first responders during the 2009-11 biennium. For the purposes of the bill, rural law enforcement is defined as licensed officers from city police departments of cities with a population of fewer than 6,500 and all licensed officers from county sheriffs' offices.

The committee recommends Senate Bill No. 2048 to provide that effective for initial licensures and license renewals occurring after December 31, 2009, as a condition for licensure as a primary care hospital or an acute care hospital, the hospital must participate in the trauma system established by the State Department of Health. The bill also provides that State Department of Health licensure for a quick response unit is not optional and the department's standards for quick response units may not require 24 hour availability.

The committee recommends Senate Bill No. 2049 to expand the EMS operations grant program. The bill provides:

- That the State Department of Health contract with a third party for completing an assessment of

EMS operations receiving funds under NDCC Chapter 23-40, make leadership training available to all EMS personnel, and develop an annual statewide EMS recruitment drive.
- A $3,250,000 appropriation from the insurance tax distribution fund to the State Department of Health for providing grants to EMS operations as provided for in NDCC Chapter 23-40 for the 2009-11 biennium.
- A $1,274,000 appropriation from the insurance tax distribution fund to the State Department of Health for implementing an assessment process, providing leadership training, and developing an annual statewide EMS recruitment drive for the 2009-11 biennium.

The committee recommends Senate Bill No. 2050 to provide that:
- Emergency medical services are defined as the prehospital medical stabilization or transportation of an individual who is sick, injured, wounded, or otherwise incapacitated or helpless, or in a real or perceived acute medical condition, by a person that holds oneself out to the public as being in that service or that regularly provides that service.
- The Health Council's rules relating to the licensure of EMS operations include performance standards, which may include response time standards.
- A taxing district that levies property taxes for support of EMS must ensure that every EMS operation that has portions of its service area in that taxing district receives a portion of the revenue from this tax which is equal to the revenue from mills levied for EMS in the townships covered by the EMS operation.
- The State Department of Health may regulate the communications methods and protocols for EMS operations.

STUDY OF THE DEPARTMENT OF EMERGENCY SERVICES

Section 8 of Senate Bill No. 2016 (2007) provides for a study of the Department of Emergency Services, including the Division of Homeland Security and the Division of State Radio, including a review of the allocation of federal homeland security funding, the operation of State Radio, and potential changes to the 911 fee structure to continue salary equity funding provided in the 2007-09 biennium.

Background Information

The committee learned NDCC Section 37-17.1-02.1 provides for the Department of Emergency Services consisting of a Division of Homeland Security and a Division of State Radio. The Adjutant General serves as the director of the Department of Emergency Services and provides for shared administration of both divisions.

The mission of the Department of Emergency Services is to conduct planning, coordination, communications, and operations for the safety and security of all citizens of North Dakota. The Department of Emergency Services is responsible for:
- Managing the State Operations Center 24 hours a day 7 days a week to ensure a statewide coordinated response to emergencies or disasters.
- Operating the State Radio Communications System which provides services to all first responders, emergency operations, and citizens in North Dakota.
- Implementing North Dakota's homeland security and emergency management programs.

The committee learned the 2007-09 biennium appropriation for the Department of Emergency Services is $54,923,504, of which $8,031,945 is from the general fund and $46,891,559 is other funds. The 2007 Legislative Assembly appropriated $300,000 from the general fund for salary equity and pay grade adjustments for Division of State Radio employees based on a compensation plan established by the Adjutant General. The increases were provided to make State Radio communications specialist salaries comparable to those offered in other communications centers in North Dakota.

Division of Homeland Security

Duties and Responsibilities

The committee learned the Division of Homeland Security consists of the state emergency operations center, the disaster recovery section, and the homeland security section. The division is to prepare and maintain a state disaster plan, including provisions for:
1. Averting or minimizing the injury and damage caused by disasters or emergencies.
2. Providing prompt and effective response to a disaster or emergency.
3. Providing emergency relief.
4. Identifying areas particularly vulnerable to a disaster or emergency.
5. Recommending zoning, building, and other land use controls, safety measures for securing mobile homes or other nonpermanent or semipermanent structures, and other mitigation and preparedness measures.
6. Assisting local officials in developing and maintaining local emergency management systems.
7. Authorizing construction of temporary works designed to protect against or mitigate danger, damage, or loss from any disaster or emergency.
8. Preparing and distributing emergency management assistance program guidance to appropriate state and local officials.
9. Organizing manpower and chains of command.
10. Coordinating federal, state, and local emergency management activities.
11. Coordinating state disaster or emergency operations plans with the disaster or emergency plans of the federal government.
12. Providing any other necessary matters.

The Division of Homeland Security is to assist in the development and revision of local disaster or emergency operations, including:

1. Coordinating the procurement of supplies, materials, and equipment during disaster or emergency operations.
2. Providing guidance and standards for local disaster or emergency operational plans.
3. Periodically reviewing local disaster or emergency operational plans.
4. Coordinating state or state and federal assistance to local emergency management organizations.
5. Assisting local emergency management organizations to establish and operate training programs and programs for emergency public information.
6. Detailing industries, resources, and facilities, within the state, both public and private, necessary for emergency operations.
7. Planning and making 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. Establishing access to a register of persons with types of training and skills important in prevention, mitigation, preparedness, response, and recovery.
9. Establishing access to a register of equipment and facilities available for use in a disaster or emergency.
10. Preparing, for issuance by the Governor, executive orders, proclamations, and guidance as necessary or appropriate in managing a disaster or emergency.
11. Coordinating and entering agreements with the federal government and any public or private agency or entity in implementing programs for disaster mitigation, preparation, response, and recovery.
12. Being the state search and rescue coordinating agency, establishing access to a register of search and rescue equipment and personnel in the state, and planning for its effective utilization.
13. Doing other things necessary, incidental, or appropriate for the implementation of the North Dakota Disaster Act.

Homeland Security Funding

The committee received information from representatives of the Division of Homeland Security regarding federal Department of Homeland Security grant funding. The committee learned the federal homeland security grant process requires the states to develop state investment strategies in alignment with national priorities established by the federal Department of Homeland Security. The Department of Emergency Services, with assistance from a technical working group and the Department of Emergency Services Advisory Committee, developed a state homeland security strategic plan to use in the federal homeland security grant submission and the homeland security allocation process. The department has received approximately $68.3 million in federal homeland security funding from 1999 through 2007, summarized as follows:

1999	$410,000
2000-01	$777,000
2002	$2,700,000
2003	$13,200,000
2004	$19,400,000
2005	$14,600,000
2006	$10,700,000
2007	$6,500,000

The committee learned 80 percent of the federal homeland security funding received by North Dakota designated for homeland security uses must be distributed to local governments according to federal guidelines. The local share of homeland security funds is distributed to counties based upon the population of the county and the assessment of the county's security needs. Each county is required to develop a homeland security spending plan in association with the state plan and that allocates the homeland security funds to entities within the county.

The committee learned the total federal homeland security funding allocated to local governments for the period 1999 to 2007 was approximately $54 million. Approximately $27 million, or 50 percent, of total allocations was for chemical, biological, nuclear, and explosives detection and protective equipment, and $21.5 million, or 40 percent, of total allocations was for interoperable communications. The total federal homeland security funding expended by local governments during the period 1999 through November 2007 was approximately $44.3 million. The following is a summary of those expenditures by jurisdiction:

Fire departments	$10,879,143
Law enforcement	11,704,164
Emergency management	14,062,898
Public works	789,106
Emergency medical services	2,372,222
Public safety communications	1,057,517
Government administration	1,021,250
Health care	2,414,489
Total	$44,300,789

Division of State Radio

The committee learned the Division of State Radio provides voice and data communications to federal, state, local, and tribal public safety entities through a number of different systems, including:

- The State Radio emergency services communications system - Provides rapid public access for coordinated dispatching of services, personnel, equipment, and facilities for law enforcement, fire, medical, or other emergency services.
- Mobile data terminal services - Provides law enforcement with mobile communications (primarily laptop computers in vehicles) to access databases and vehicle information.

- Law enforcement telecommunications system - Provides information on wanted felons, state-to-state information on crimes, and everyday police activities.

The Division of State Radio serves as the public safety answering point for 22 small population counties. A 911 call made in one of these counties is routed to State Radio. State Radio staff is responsible for collecting the necessary information and dispatching appropriate units and personnel. In addition to the public safety answering point operated by State Radio, there are 22 locally operated public safety answering points.

The Division of State Radio serves as the state dispatch center for the Highway Patrol and provides dispatching services for other state entities, such as the Game and Fish Department and the Attorney General's office. The division provides dispatching services for various federal entities, such as the National Park Service, the United States Border Patrol, and the United States Marshals Service. In addition, the division coordinates road closures, answers the security line for the Governor's residence and office, and answers "report all poachers" calls.

Performance Audits

The committee learned the State Auditor's office was directed, pursuant to Section 5 of House Bill No. 1016 (2005), to conduct a performance audit of the Department of Emergency Services, including the Division of State Radio, and a performance audit of fees collected for 911 services and the utilization of fees. The reports were presented to the Legislative Audit and Fiscal Review Committee on January 10, 2006. The performance audits covered the period July 1, 2003, through April 30, 2005. The performance audits were to address the following:

1. Has management established effective processes and procedures to fulfill the Department of Emergency Services' purposes, functions, and responsibilities?
2. Are 911 fees properly used and sufficient for the costs incurred with operating the 911 system?

The performance audit report of the Department of Emergency Services, including the Division of State Radio, included 22 audit recommendations, of which 18 related to the department's management processes and procedures and 4 related to establishing, collecting, and using fees by the department. It was noted in the report that significant improvements were needed in how the Department of Emergency Services, including the Division of State Radio, establishes, collects, and uses fees. As a result of the performance audit, the Department of Emergency Services contracted with Maximus, Inc., to do a complete review of State Radio costs and to provide a recommendation for an appropriate fee schedule for services provided, based on State Radio's costs.

The performance audit report of the collection and use of 911 fees included four audit recommendations. The audit report noted significant improvements were needed in the collection process of 911 fees and how 911 fees are being used by political subdivisions.

Mobile Data Terminal Services

The committee learned NDCC Section 54-23.2-09 provides that the Division of State Radio is to establish and charge fees to local law enforcement agencies for mobile data terminal services. The fees must be based on actual costs incurred by the division in providing the service. The current fee is $100 for the initial hookup and $25 per month per terminal. There are 418 mobile data terminals and 835 users in the state. The current fees result in annual revenue of $46,500, or approximately 40 percent of actual costs. The department is considering two options for a potential fee increase. The first option is to continue charging a basic terminal fee, and the second option is to institute a user fee. The proposed fees will generate approximately $94,899, which is an increase of approximately $48,399. The following is a summary of the options for a potential fee increase:

	Current Fee	Potential Fee Range
Option 1 - Per terminal	$25	$45 to $55
Option 2 - Per user	Not applicable	$11.50 to $13

Law Enforcement Telecommunications System Services

The committee learned the law enforcement telecommunications system is a computer-based message switching system that links together state, local, and federal law enforcement and justice agencies for the purpose of information exchange. North Dakota users receive nationwide information on wanted felons, state-to-state information on crimes, and everyday police activities. North Dakota Century Code Section 54-23.2-08 provides that each county is to pay the Division of State Radio for approximately 50 percent of the cost of the law enforcement telecommunications system. The rates are set by county population levels and the director of State Radio may adjust fees for the law enforcement telecommunications system to reflect changes in economic conditions and the general economy after consulting with representatives of state and local government. The current rates are $10 more than the minimum provided for in Section 54-23.2-08 based on a $10 per month increase implemented by the director of State Radio in 1993.

The committee learned there are 136 law enforcement telecommunications system terminals in the state, including 111 county and city law enforcement terminals, 5 state law enforcement terminals, and 20 federal or other law enforcement-affiliated terminals. The current fees result in annual revenues of $162,516, or approximately 33.5 percent of actual costs. The department is considering potential fee increases. The proposed fees would generate approximately $274,857 in annual revenue, which represents approximately 56.7 percent of the actual cost to provide the service.

911 Services

The committee learned NDCC Section 54-23.2-09 provides that the Division of State Radio may charge fees to the 22 counties for which the division is providing 911 emergency dispatching services. The fee to be paid

by the political subdivisions is to be at least 20 cents per telephone and wireless access line for 911 dispatching services provided to political subdivisions. The current rate charged by the Division of State Radio is 20 cents per telephone and wireless access line.

The Division of State Radio has proposed a fee increase of 20 cents per line per month for providing 911 services. The fee increase would result in a total fee of 40 cents per line per month. The proposed fee increase includes funding to continue that portion of the salary equity funding provided for the 2007-09 biennium that relates directly to the 22 contract counties. To continue the entire salary equity funding in the fee for 911 services from the 22 contract counties, the proposed fee increase would need to be 33 cents per line per month.

City and County Fees for 911 Services

The committee learned NDCC Chapter 57-40.6 establishes the requirements relating to the authority of cities and counties to impose 911 fees on the users of telephone and wireless access lines. A governing body of a city or county may provide by resolution, subject to the vote of the electors, for the imposition of a fee of up to $1 per month per communication connection for providing an emergency services communication system, and in the case of wireless, an enhanced 911 service. The 911 fees are collected by telephone providers who submit the fees, less an administration cost, to respective political subdivisions. The 911 fees received by political subdivisions are to be used for implementing, maintaining, or operating the emergency services communication system.

The committee learned in order to implement wireless 911 within the state, all political subdivisions receiving 911 fees contracted with the North Dakota Association of Counties to coordinate the implementation of the networking, nonpremise equipment upgrades, testing, and ongoing services necessary for wireless 911. The North Dakota Association of Counties entered a contract with telephone service providers for the wireless 911 project. The project began in September 2001, and at that time, the counties submitted 50 percent of the amount received from wireless carriers for the wireless project. After several years, the project's governing board determined that 50 percent of the wireless fee was generating more revenue than necessary; therefore, in August 2005 the board lowered the remittance percentage to 40 percent of the amount received from wireless carriers. Currently the remittance percentage of 40 percent is generating significantly less than the monthly project costs; therefore, the fund balance is decreasing. The project's governing board has approved a 20-month extension on the original five-year master contract and has negotiated reductions in per unit costs to moderate the continuing decrease in the fund balance.

The committee learned NDCC Section 57-40.6-12 provides that the governing body of each city or county which has adopted a fee on assessed service for 911 services is to make an annual report of income, expenditures, and status of its emergency services communication system. The annual report is submitted to the Emergency Services Coordinating Committee. The Emergency Services Coordinating Committee is composed of three members--one appointed by the North Dakota 911 Association, one appointed by the North Dakota Association of Counties, and one appointed by the Adjutant General, representing the Division of State Radio. The Emergency Services Coordinating Committee is to:

- Recommend to the Legislative Council changes to the operating standards for emergency services communications, including training or certification standards for dispatchers.
- Develop guidelines regarding allowable uses of the assessed communications services fee revenue collected.
- Request, receive, and compile reports from each governing body on the use of the proceeds of the fee imposed, analyze the reports with respect to the guidelines, and file a report with the Legislative Council in each even-numbered year regarding the use of the fee revenue. The Energy Development and Transmission Committee was assigned the responsibility to receive this report for the 2007-08 interim.

Next Generation 911

The committee received information from representatives of the North Dakota Association of Counties and Qwest regarding Next Generation 911. The committee learned a fundamental and significant change in the communications industry is driving the need for public safety solutions that accommodate the many new ways that emergency services can be requested and the response provided. In the future, public safety will need to be able to receive voice, data, and video messages from automatic crash notification systems, hand-held computers, and satellite telephones. The state will need to convert from an analog system to an Internet protocol system while maintaining the ability to serve legacy communication services. The federal Department of Transportation has been assigned responsibility to guide the Next Generation 911 effort nationally and the North Dakota 911 Association has begun its planning efforts.

Task Force on Emergency Services

Upon request of the committee, the Adjutant General assembled a task force for the purpose of identifying the strategic structure and capability of emergency services in the state. The task force membership included representatives from the following organizations:

- Department of Emergency Services.
- Division of Homeland Security.
- Division of State Radio.
- North Dakota Police Chiefs Association.
- North Dakota Sheriffs Association.
- North Dakota Fire Chiefs Association.
- North Dakota Metro Chiefs Association.
- North Dakota EMS Association.

- North Dakota Healthcare Association.
- North Dakota Emergency Management Association.
- North Dakota National Guard.
- North Dakota 911 Association.
- North Dakota Public Health Association.
- North Dakota Highway Patrol.
- North Dakota Bureau of Criminal Investigation.

The task force held several meetings and established seven working groups for studying the following areas:

- Funding.
- Recruitment and retention of responders.
- Transformational models.
- Training.
- Technology.
- Mutual aid agreements.
- Standards.
- Capability definitions.

The primary goals of the task force were to:

- Suggest the future structure and capability requirements necessary to fulfill North Dakota's emergency services needs through 2015.
- Identify gaps between the current state of emergency services and the prioritized capabilities required in the future.
- Provide the Public Safety Committee with recommended initiatives for possible consideration by the 2009 Legislative Assembly that will address any organization and capability gaps.

The task force made 15 recommendations to improve response and recovery operations throughout North Dakota. The following is a summary of the recommendations:

Areas	Recommendations
Funding	Implement and provide funding for an emergency response and recovery fund. The fund would provide local and tribal governments, individuals, and eligible public and private emergency response entities the ability to access state funds for a share of costs incurred as a direct result of a local emergency or disaster that does not meet the requirements for a presidential declaration. Expand the North Dakota hazardous chemical emergency response preparedness program to ensure emergency responders have access to the appropriate training in response to a fire or other emergency that involves hazardous chemicals defined by the National Fire Protection Association
Mutual aid agreements	Implement legislation that complies with current Federal Emergency Management Association regulations and policies and provides the standards for mutual aid agreements between and among jurisdictions and emergency responding agencies
Recruiting and retention of responders	Develop a special license plate for emergency responders (fire, law enforcement, and EMS) and approve one free vehicle registration for enrolled, active, and certified responders Develop and provide funding for a one-time $5,000 retirement payment program for volunteer emergency responders with 20 years of active volunteer status as a certified responder Implement legislation that creates a North Dakota Employment Rights Act for volunteer responders
Standards	Develop legislation that adopts over time nationally recognized standards for fire, law enforcement, EMS, and public communications dispatchers Establish a minimum certification standard for special operations units within North Dakota
Technology	Seek funding to purchase or lease the infrastructure and equipment required to add eight additional towers in order to expand State Radio coverage to 95 percent Seek funding for the technology package required to transition the current mobile data system to high-speed broadband access through private enterprise Seek funding for Phase 2 of computer-assisted dispatch within State Radio inclusive of an automatic vehicle locator system
Transformational models	Implement legislation that facilitates the transformation of the current emergency management model into a regional model. An eight-region model should be considered with each region consisting of five to seven counties served by an emergency management team of five highly trained and experienced personnel. Initiate an interim study on the effects of Next Generation 911 on public safety answering points statewide
Training	Seek state funding to provide multicommunity to regional training and exercising activities to supplement decreasing federal training dollars Initiate an interim study on the feasibility of establishing a multidiscipline emergency responder academy within North Dakota

Committee Considerations

The committee considered, but does not recommend, a bill draft relating to special license plates and free vehicle registration for emergency responders. The bill draft would have provided:

- The director of the Department of Transportation and the Adjutant General design a decorative decal to be placed on a distinctive number plate, and an applicant who is an emergency responder is entitled to issuance of the decals and plates for one motor vehicle.
- An emergency responder who qualifies for an emergency responder number plate is exempt from motor vehicle registration fees.
- An appropriation of $750,000 from the general fund to the Department of Transportation for creating and issuing emergency responder number plates.

The committee considered, but does not recommend, a bill draft relating to a retirement payment program for volunteer emergency responders. The bill draft would have provided that the Adjutant General establish a retirement payment program for volunteer emergency responders. Under the program, the Adjutant General would have established an account for each eligible volunteer emergency responder and contributed $250 annually to each account established. The Adjutant General would not have contributed more than $5,000 to an account. A volunteer emergency responder must have completed 20 years of active volunteer status as a certified responder to be eligible to access the account. A volunteer emergency responder who did not complete 20 years of active volunteer status as a certified responder would have forfeited all state contributions made to the volunteer emergency responder's account. The Adjutant General would have adopted rules to implement the program, including determination of eligibility to participate in the program. An expenditure made under the program would have been deemed compensation for volunteer services provided and made for a public purpose and not construed as a gift under Article X, Section 18, of the Constitution of North Dakota.

The committee considered, but does not recommend, a bill draft relating to a North Dakota Employment Rights Act for volunteer emergency responders. The bill draft would have provided that an employer may not terminate or demote an employee who is a volunteer emergency responder or in any other manner discriminate against that employee in the terms and conditions of employment based upon the employee being absent or tardy from employment due to serving as a volunteer emergency responder in responding to a disaster or emergency.

The committee considered, but does not recommend, a bill draft relating to nationally recognized standards for fire departments, law enforcement, EMS, and public communications dispatchers. The bill draft would have:

- Provided that the Department of Emergency Services Division of Homeland Security coordinate the adoption of nationally recognized standards for emergency services providers, including fire departments, law enforcement, EMS, and public communications dispatchers.
- Provided a $190,000 general fund appropriation to the Adjutant General for coordinating the adoption of nationally recognized standards for emergency services providers.
- Authorized one FTE position for the Adjutant General for implementing the responsibility.

Committee Recommendations

The committee recommends House Bill No. 1046 to:

- Create an emergency response and recovery commission consisting of the Governor, the director of the Department of Human Services, the director of the Department of Emergency Services, the State Health Officer, and a representative of a political subdivision appointed by the Governor. The commission is to review and approve rules developed by the Department of Emergency Services with respect to the emergency response and recovery fund, approve disbursement of funds from the emergency response and recovery fund, and monitor the balance of the emergency response and recovery fund.
- Create an emergency response and recovery fund to be administered by the Department of Emergency Services and invested by the State Investment Board. On a quarterly basis, the earnings or interest of the fund must be placed in a special operating account that may be used by the emergency response and recovery commission to assist individuals, political subdivisions, and Indian tribes in paying the costs of responding to and recovering from a disaster or emergency declared by the Governor which does not qualify for a presidential disaster declaration. Whenever the amount in the special operating account exceeds $2 million, any additional earnings or interest must be transferred to the state general fund.
- Provide an $11 million general fund appropriation to the Department of Emergency Services for deposit in the emergency response and recovery fund in the 2009-11 biennium. Of the $11 million, $1 million must be deposited in the special operating account created by the bill.

The committee recommends House Bill No. 1047 to increase the per chemical fee for the hazardous chemicals preparedness and response program by $27, from $25 to $52, and the maximum fee for a facility by $266, from $150 to $416. The increased fees are anticipated to generate an additional $254,000 in revenue per biennium. The bill also provides that the fees collected be distributed:

- One-third to the Department of Emergency Services to actively manage the statewide hazardous chemicals preparedness and response program as required by state and federal law.
- One-third to local emergency planning commissions for local expenses.
- One-third to the North Dakota Firefighters Association. The association is to use the funds to support training and response capabilities for incidents involving hazardous chemicals.

The committee recommends House Bill No. 1048 to provide that the Department of Emergency Services is to prepare and distribute to political subdivisions guidelines and model intrastate mutual aid agreements to provide a system for mutual assistance among political subdivisions in the prevention of, response to, and recovery from a local disaster or emergency. The department is to ensure that any intrastate mutual aid agreement entered by a political subdivision complies with the guidelines provided by the department and any federal requirements for federal disaster or emergency reimbursement.

The committee recommends House Bill No. 1049 to provide that the Peace Officer Standards and Training Board, in consultation with the Bureau of Criminal

Investigation, prescribe minimum certification standards and continuing education requirements for all special operations units that operate under the authority of local law enforcement agencies in the state.

The committee recommends House Bill No. 1050 to provide a $7.2 million general fund appropriation to the Adjutant General for purchasing or leasing infrastructure and equipment for up to eight additional radio towers to expand coverage of the State Radio system during the 2009-11 biennium.

The committee recommends House Bill No. 1051 to provide a $750,000 general fund appropriation to the Adjutant General for upgrading the Department of Emergency Services' mobile data system to high-speed broadband access during the 2009-11 biennium.

The committee recommends House Bill No. 1052 to provide a $2 million general fund appropriation to the Adjutant General for completing Phase 2 of the Department of Emergency Services' computer-aided dispatch system, including implementation of an automatic vehicle locator system, during the 2009-11 biennium.

The committee recommends House Bill No. 1053 to provide that each county maintain an emergency management organization which serves the entire county or be a member of a regional emergency management organization that serves more than one county. The bill provides a $1.5 million general fund appropriation to the Adjutant General for providing grants to counties who merge emergency management efforts during the 2009-11 biennium.

The committee recommends House Bill No. 1054 to provide that the Adjutant General study the effects of Next Generation 911 on the public safety answering points in the state during the 2009-10 interim. The study must address the technology needs relating to Next Generation 911; the most efficient method of implementing Next Generation 911, including the use of shared technology; and any necessary changes to the current 911 funding model. The bill provides a $100,000 general fund appropriation to the Adjutant General for the 2009-11 biennium for conducting the study.

The committee recommends House Bill No. 1055 to provide a $400,000 general fund appropriation to the Adjutant General for providing grants for regional cross-discipline and cross-jurisdictional training and exercising activities for fire departments, law enforcement, EMS, and public communications dispatchers for the 2009-11 biennium.

The committee recommends House Bill No. 1056 to provide that the Adjutant General study the feasibility and desirability of establishing a multidiscipline emergency responder academy within the state during the 2009-10 interim. The study should address the needs of all emergency responders, the possibility of having a single central location with all necessary equipment and training areas, and the availability of providing mobile training. The bill provides a $100,000 general fund appropriation to the Adjutant General for the 2009-11 biennium for conducting the study.

DELIVERY AND FUNDING OF VETERANS' SERVICES STUDY

House Concurrent Resolution No. 3063 directed a study of the delivery and funding of veterans' services by the state and counties.

Previous Legislative Council Studies

1993-94 Budget Committee on Home and Community Care

During the 1993-94 interim, the Budget Committee on Home and Community Care studied long-term care needs of veterans in the state and the use of state and other existing facilities for long-term care for veterans. The committee recommended Senate Bill No. 2033 (1995) authorizing the acquisition or construction of a western North Dakota Veterans Home at a cost not to exceed $3 million, including up to $1,050,000 from a loan from the veterans' postwar trust fund and $1,950,000 from a Veterans Administration state home grant. The 1995 Legislative Assembly did not approve Senate Bill No. 2033.

2001-02 Budget Committee on Government Administration

During the 2001-02 interim, the Budget Committee on Government Administration studied the management structure and oversight of the Veterans Home and the selection process for the commandant or administrator of the home. The committee recommended the following bills:

- House Bill No. 1027 to change the residency requirement for a veteran to be eligible for admission from one year to 30 days. This bill was not approved by the 2003 Legislative Assembly.
- House Bill No. 1028 to change the requirement for a spouse or surviving spouse of a veteran to be admitted to the Veterans Home. The bill reduced the number of years the spouse or surviving spouse must be married to a veteran from five years to one year and eliminated the requirement that the spouse or surviving spouse be at least 45 years old. This bill was not approved by the 2003 Legislative Assembly.
- House Bill No. 1029 to allow a veteran's service-connected compensation to be included in the veteran's contribution to the cost of care at the Veterans Home. This bill was approved by the 2003 Legislative Assembly.
- House Bill No. 1030 to provide for a Legislative Council study during the 2003-04 interim of the future role of the Veterans Home, including the development of a strategic plan for the operations of the home and the implementation of the recommendations included in the performance audit. This bill was not approved by the 2003 Legislative Assembly.

North Dakota Veterans' Benefits

The committee learned there are several benefits available to North Dakota veterans. The following is a summary of those benefits:

1. Dependent tuition waiver - Under NDCC Section 15-10-18.3, a dependent of a resident veteran (or if the child's other parent was a resident of this state at the time of death or determination of total disability of the veteran) who was killed in action or died from wounds or other service-connected causes, was totally disabled as a result of service-connected causes, died from service-connected causes, died from service-connected disabilities, was a prisoner of war, or was declared missing in action, is entitled to free tuition to the level of a bachelor's degree or certification of completion from any state supported institution of higher education or technical or vocational school.
2. Veterans' adjusted compensation (bonuses) - North Dakota Century Code Chapter 37-28 provides for adjusted compensation payments to members of the North Dakota National Guard, and North Dakota residents of the reserve and active duty component, who were mobilized after December 5, 1992, in support of military operations around the world. The bonus payments are:
   a. Each National Guard or reserve component veteran mobilized stateside is entitled to $50 for each month or fraction thereof, not to exceed $900.
   b. Each National Guard, reserve, or active component resident veteran of foreign service who received an expeditionary medal or campaign badge is entitled to $100 for each month or major fraction thereof, not to exceed $1,800.
   c. Combined totals for stateside and foreign service may not exceed $1,800.
   d. If the veteran received a Purple Heart for foreign service, the veteran is entitled to a payment of $2,500 in lieu of monthly payments for adjusted compensation.
   e. If the veteran is deceased, the veteran's beneficiary is entitled to any payments to which the veteran would have been entitled.
   f. In the case of a veteran who died as a result of active service during the period of service, the beneficiary of the veteran is entitled to a payment of $5,000 in lieu of any other compensation.
   g. The 2005 Legislative Assembly appropriated $5 million from the general fund for providing adjusted compensation payments (bonuses) for certain domestic and foreign service. The 2007 Legislative Assembly approved Senate Bill No. 2115, extending the program for two more years.
3. National Guard tuition waiver program - Under NDCC Chapter 37-07.1, an active member of the National Guard enrolled in a state-controlled school or participating private school is eligible for a waiver of up to 25 percent of any tuition fees (based on the student achieving at least a 2.0 grade point average). School waivers are applied as credits to the semester attended which will reduce the tuition amount due the following semester. If the student does not attend the following semester, the school payment is sent to the student in the form of a check.
4. National Guard tuition grants (tuition and enlistment compensation program) - North Dakota Century Code Section 37-07.2-01, as amended by Senate Bill No. 2115 (2007), provides for a grant program for active members of the North Dakota National Guard enrolled in an accredited North Dakota postsecondary institution. The program provides up to $1,000 per semester to eligible students taking 12 or more credit-hours (based upon the student achieving at least a 2.0 grade point average). The goal of the tuition and enlistment program is to pay 100 percent of tuition costs for National Guard members when combined with the tuition waiver program and federal government programs. Students taking less than 12 credit-hours will also be eligible for a percentage of the funding depending on actual credit-hours. The program is limited to 130 credit-hours per National Guard member and is for undergraduate study only. Reimbursements are made directly to the student in the form of a check.
5. Veterans' preferences - Veterans' preferences are provided under NDCC Chapter 37-19.1. This preference provides that veterans who are state residents are entitled to preference over all other applicants in appointment or employment by governmental agencies, provided that such veteran is a United States citizen at the time of application for employment.
6. Motor vehicle excise tax exemption - Under NDCC Section 57-40.3-04, any motor vehicle acquired by, or leased and in the possession of, a resident disabled veteran or a former prisoner of war who registers the vehicle with a distinctive license plate is exempt from motor vehicle excise taxes. In addition, motor vehicle excise taxes are exempt for any motor vehicle transferred without consideration to or from a person within 30 days prior to that person entering into or within 30 days after discharge or while serving in the armed forces, provided the person certifies to the director of the Department of Transportation that the transfer is made only by reason of entering into, serving in, or being discharged from the armed forces of the United States.
7. Aircraft excise tax exemption - Under NDCC Section 57-40.5-03(1), an aircraft acquired by a disabled veteran is exempt from aircraft excise tax.
8. Property tax exemption - Under NDCC Section 57-02-08(20), certain qualified disabled veterans may be eligible for property tax reductions under the homestead property tax credit, which also

applies to the unremarried surviving spouse of such a deceased veteran.

9. Income tax deductions (active duty) - Under NDCC Section 57-38-01.2(1)(k), individuals on active duty in the armed forces of the United States or who attend periodic training meetings for drill and instruction in the National Guard or a reserve unit are entitled to an annual reduction of up to $1,000 against income for income tax purposes. Persons serving in the armed forces who are stationed outside the United States for not less than 30 days are allowed an additional reduction of up to $300 per month for each month while on active duty at such location. (These deductions apply on the state long-form income tax return.)
10. Income tax deduction (mobilized armed forces members) - Under NDCC Section 57-38-01.2(1)(u), payments received for services performed when mobilized under Title 10 of the United States Code as a member of the National Guard or reserve member of the armed forces of the United States may be excluded from income for income tax purposes. An individual claiming this reduction may not also claim the reduction for the time the individual was under federal orders for active duty and may not claim a reduction on income already excluded from federal taxation due to service in a combat or hazardous duty zone.
11. Income tax deductions (retirement) - Under NDCC Section 57-38-01.2(1)(l), military retirement pay of up to $5,000 per year may be deducted from income for income tax purposes. (This applies only on the long-form income tax return.)
12. Loans to veterans - The veterans' aid fund is a revolving fund established under NDCC Chapter 37-14. This fund is to be used to make loans to any veteran and surviving spouse of a veteran. Under Section 37-14-06, these funds are limited to $5,000 per veteran or survivor.
13. Veterans' postwar trust fund - The veterans' postwar trust fund is a permanent trust fund consisting of money transferred or credited to the fund by law or appropriation of the Legislative Assembly. This fund is established under NDCC Section 37-14-14 and the fund's income is to be used by the Administrative Committee on Veterans Affairs as a continuing appropriation for programs authorized by law.
14. Hardship assistance program - The purpose of this grant program is to provide assistance to veterans, their spouses, or unremarried surviving spouses of eligible veterans. The individual must have a need for dental work, eyeglasses, hearing aids, or transportation for medical treatment; be a citizen of North Dakota for at least one year; and meet income guidelines.
15. Transportation system - The veterans' transportation system is designed to aid veterans by providing free transportation to a veterans' hospital. Currently, there are five vans on scheduled routes bringing veterans to Fargo, North Dakota, or Miles City, Montana. The cost of the program is underwritten in part by the veterans' postwar trust fund.
16. Veterans Cemetery - The Veterans Cemetery is located on a 35-acre tract of land in the southwest corner of Fort Abraham Lincoln State Park. Pursuant to NDCC Section 37-03-14, the Adjutant General may accept and expend private and federal funds to establish and operate the Veterans Cemetery. The Adjutant General is to provide lots in the Veterans Cemetery for the interment of deceased members of the National Guard, other reserve components, and veterans, and their spouses, minor children, and unmarried adult children who were physically or mentally disabled and incapable of self-support.

Administrative Committee on Veterans Affairs

The committee learned the Administrative Committee on Veterans Affairs is responsible for the organization, policy, and general administration of all veterans' affairs in North Dakota. Pursuant to NDCC Section 37-18.1-01, the Administrative Committee on Veterans Affairs is comprised of 15 voting members, each appointed by the Governor, representing the five major veteran organizations in the state. Each year, the Governor is to appoint one member from a list of two names submitted by the following veteran organizations--the American Legion, Veterans of Foreign Wars, Disabled American Veterans, veterans of World War II, Korea, and Vietnam (AMVETS), and Vietnam Veterans of America. The administrative committee is also comprised of three nonvoting members who are to serve in an advisory capacity--the Adjutant General, the center director of the federal Department of Veterans Affairs, and the executive director of Job Service North Dakota. The Governor appoints a chairman and secretary of the administrative committee.

The committee learned the chairman and secretary of the administrative committee are to appoint a subcommittee responsible for supervision and government of the Department of Veterans Affairs. Once appointed, a subcommittee member may continue to serve as long as the subcommittee member is a member of the administrative committee. Each nominating organization for the administrative committee must have at least one member serving on the subcommittee. The administrative committee is responsible for appointing the commissioner of the Department of Veterans Affairs. The commissioner must be a resident veteran of North Dakota. The commissioner also serves as executive secretary of the subcommittee on veterans affairs. The commissioner does not have a vote in the affairs of the subcommittee.

The committee learned the chairman and secretary of the administrative committee, subject to approval by the full committee, are responsible for appointing a seven-member governing board responsible for the administration of the Veterans Home. The governing board members may be from within or outside the

administrative committee. A member of the subcommittee overseeing the Department of Veterans Affairs may not also serve on the governing board. The governing board selects the administrator of the Veterans Home, who serves at the pleasure of the governing board.

The members of the administrative committee may not receive compensation for the performance of their official duties. Voting members may be reimbursed for travel expenses and meals and lodging expenses in connection with their official duties at the same rate and in the same manner as elected officials and employees of the state. The payments for expenses are to be paid by the Department of Veterans Affairs and the Veterans Home to each of their respective subcommittee members incurring the expenses.

The committee learned NDCC Section 37-18.1-03 provides that the governing board of the Veterans Home and the subcommittee governing the Department of Veterans Affairs are to annually conduct a performance evaluation of the administrator and commissioner, respectively. The governing board and the subcommittee are to create and implement a strategic plan for the Veterans Home and Department of Veterans Affairs, respectively. The governing board and the subcommittee are to annually provide a report to the administrative committee as to the status of the strategic plan. After receiving the report, the administrative committee is to submit the report to the Governor.

Department of Veterans Affairs

The committee learned the North Dakota Department of Veterans Affairs was established by the 1945 Legislative Assembly. Prior to that it had been known as the Office of the Veterans' Service Commissioner, which was established in 1927. The main office of the Department of Veterans Affairs is located at 1411 32nd Street South in Fargo. There is a branch office located at 1929 North Washington Street in Bismarck.

The committee learned the mission of the Department of Veterans Affairs is to ensure that every veteran in the state of North Dakota who has served in the military receives every benefit to which the veteran may be entitled from the federal Department of Veterans Affairs, allied agencies, and from the state of North Dakota. The department has the responsibility of training county and tribal veterans' service officers. The department also provides the following services:

- Disseminates current information to the state veteran population through the use of news media, county veterans' service officers, and veterans' organizations;
- Assists veterans with the completion of claims for entitlement from the United States Department of Veterans Affairs;
- Counsels veterans on employment, educational programs, disability benefits, and other related veterans' activities;
- Conducts training seminars for veterans' service officers; and
- Administers the veterans' aid loan program, the transportation program, and hardship assistance program.

The committee learned the 2007-09 biennium appropriation for the Department of Veterans Affairs is $866,772 from the general fund, an increase of $90,390 from the 2005-07 biennium general fund appropriation of $776,382. The Department of Veterans Affairs is authorized seven FTE positions for the 2007-09 biennium, an increase of one FTE position from the 2005-07 authorized level of six FTE positions. The Legislative Assembly authorized one FTE women veterans' coordinator position.

Veterans Home

The committee learned NDCC Section 37-15-01 provides that the Veterans Home is to be located in Lisbon. Veterans' homes were established by an Act of Congress in 1887. Certain lands were set aside in a number of states and territories for the establishment and maintenance of homes for veteran Union soldiers. The Veterans Home was established in 1891 and has been in operation since 1893. The Veterans Home is owned and operated by the state of North Dakota and is currently providing skilled and basic care to North Dakota veterans and spouses.

The committee learned the total 2007-09 biennium appropriation for the Veterans Home is $34,039,818, of which $4,125,266 is from the general fund and $29,914,552 is other funds. The 2007-09 legislative appropriation includes funding for 92.37 FTE positions, an increase of 1.4 FTE positions from the 2005-07 authorized level of 90.97. The Legislative Assembly added 1.4 FTE night watchman positions for the Veterans Home.

The total 2007-09 biennium appropriation includes $21,098,656, of which $6,483,226 is from the permanent oil tax trust fund, $12,040,278 is from federal funds, and $2,575,152 is from revenue bonds for construction of a new 150-bed Veterans Home. The funding from the permanent oil tax trust fund is to be used as a match (35 percent state share) for federal funding (65 percent federal share) to build a new Veterans Home facility and demolish the existing facility. The appropriation from the permanent oil tax trust fund is only to be made available upon the Veterans Home obtaining approval for a federal state home construction grant from the federal Department of Veterans Affairs. The federal match is limited to the cost of a 121-bed facility, which is less than the current 150-bed capacity authorized for the Veterans Home. The 2007 Legislative Assembly authorized $2,575,152 from the issuance of revenue bonds for project costs associated with expanding the Veterans Home construction project from the 121-bed capacity to a 150-bed capacity facility. The Veterans Home is to use nongeneral fund revenue sources for the retirement of these bonds.

County Veterans' Service Officers

The committee learned NDCC Section 37-14-18 provides that the board of county commissioners of each county may appoint, employ, and pay, on a full-time or

part-time basis, an officer to be known as a county veterans' service officer. Such appointment must be made with the prior advice of the commissioner of the Department of Veterans Affairs and in accordance with veterans' preferences. It is the duty of the county veterans' service officer to become acquainted with the laws, both state and federal, enacted to assist returning members of the armed forces in the presentation, proof, and establishment of such claims, privileges, and rights as they have. It also is the duty of the county veterans' service officer, under the supervision of the commissioner of the Department of Veterans Affairs, to actively cooperate with and to coordinate the activities of the state and federal agencies within the county which the officer serves to facilitate their operation and ensure promptness in the solution of the problems concerned with the reestablishment of returning servicemen and servicewomen in civilian pursuits.

North Dakota Century Code Sections 57-15-06.4 and 57-15-06.7(18) provide that a county may annually levy a tax to provide for the payment of the salary, traveling, and office expenses of the county veterans' service officer. The county mill levy rate may not exceed two mills.

The committee learned tribal veterans' service officers are appointed and employed by each respective tribe. The tribal veterans' service officers are invited to participate in the training seminars offered by the Department of Veterans Affairs each spring and fall.

Performance Audits

The committee received information from representatives of the State Auditor's office regarding performance audits of the Department of Veterans Affairs and the Administrative Committee on Veterans Affairs. The committee learned the State Auditor's office conducted performance audits of the department and the administrative committee during the 2003-05 biennium and completed an audit followup on the performance audits in 2007. The State Auditor's office determined 26 of the 27 performance audit recommendations were at least partially implemented. The committee learned that the department and the administrative committee focused on implementing the recommendations, and the administrative committee and its subcommittees relating to the department and the Veterans Home are more engaged with their respective entities since the performance audit.

Committee Findings and Observations

The committee received information from county veterans' service officers regarding the delivery and funding of veterans' services. The committee learned 95 percent of the state's veterans' claims processed originate through county veterans' service officers. Training is important for county veterans' service officers, and many county veterans' service officers only receive training provided by the state, which the committee learned, is not adequate. The committee received the following suggestions for improving the delivery and funding of veterans' services:

1. Modify the mission of the Department of Veterans Affairs to train and provide support.
2. Review job descriptions of county veterans' service officers.
3. Eliminate the Department of Veterans Affairs claims personnel and assign them to training and support.
4. Budget the necessary funding for training and support.
5. Encourage regionalization and cooperation between counties.

The committee received information from other interested persons regarding the delivery and funding of veterans' services. The committee learned:

- Some individuals believe the Administrative Committee on Veterans Affairs does not accurately reflect the state's veteran population and the choices of whom to nominate are severely restricted by the current process, which is not based on the qualification of the candidates.
- The size of the Administrative Committee on Veterans Affairs is not as important as the quality of its members.
- Many of the state's veterans are elderly and cannot travel very far on their own. It is essential that North Dakota maintain and improve on its current system to ensure veterans and other claimants receive the benefits for which they are entitled.
- It is a challenge for county veterans' service officers to keep current on their advocacy skills. The Department of Veterans Affairs should employ a staff of field officers, each of whom would be responsible for training county veterans' service officers within an assigned region.

The committee learned the mission of the National Association of County Veterans Service Officers is to promote and protect the rights of veterans and their dependents through education, communication, and technology. Through membership in the association, county veterans' service officers receive training and can become nationally certified. Some states have adopted National Association of County Veterans Service Officers certification as a requirement for their county veterans' service officers.

The committee also reviewed information regarding county veterans' service officer FTE positions, county veterans' service officer salaries, county veterans' service officer mill levies, the veterans population, veterans' claims, total veteran-related federal expenditures, and transportation aid by county.

Committee Recommendations

The committee recommends House Bill No. 1057 to:

- Require county veterans' service officers to maintain accreditation by the National Association of County Veterans Service Officers within one year of appointment.
- Provide a $20,000 general fund appropriation to the Department of Veterans Affairs for arranging for National Association of County Veterans

Service Officers accreditation training during the 2009-11 biennium.

- Require two of the Department of Veterans Affairs existing FTE positions to be used for training officers for the 2009-11 biennium.
- Provide that the general supervision and governance of the Veterans Home is vested in a Veterans Home Governing Board, which consists of seven members appointed by the Governor.
- Provide that the commissioner of the Department of Veterans Affairs be appointed by the Governor.
- Require the Department of Veterans Affairs be located in Bismarck or Mandan.
- Provide that any employee of the Department of Veterans Affairs may not be a conservator for a person receiving benefits or services from the department.
- Reduce the size of the Administrative Committee on Veterans Affairs from 15 individuals to 7 individuals with the commissioner of the Department of Veterans Affairs serving as the chairman of the committee.
- Revise the powers and duties of the Administrative Committee on Veterans Affairs to remove the supervision of the Department of Veterans Affairs and the Veterans Home and to provide that the committee create and implement a strategic plan for the delivery of veterans' services. The bill does not change the committee's duties relating to the administration of the veterans' postwar trust fund as provided in Article X, Section 25, of the Constitution of North Dakota and NDCC Section 37-14-12 and administration of the veterans' aid fund as provided in Section 37-14-10.

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 Legislative Council for approval or rejection. The agreement may not become effective until approved by the Legislative Assembly or the Legislative Council. The Public Safety Committee was assigned this responsibility for the 2007-08 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 a cooperative agreement with South Dakota. The South Dakota commission proposed several initiatives, but the South Dakota Legislature did not approve any of the related bills.

During the 2007-08 interim, no proposed agreements were submitted to the committee for approval to form a bistate authority with the state of South Dakota.

TAXATION COMMITTEE

The Taxation Committee was assigned four studies. Section 13 of Senate Bill No. 2032 (2007) directed a study of property tax reform and relief for taxpayers, with the goal of reduction of each taxpayer's annual property tax bill to an amount not more than 1.5 percent of the true and full value of property. Section 3 of Senate Bill No. 2178 (2007) directed a study of allocation of oil and gas tax revenues to or for the benefit of political subdivisions. Senate Concurrent Resolution No. 4021 (2007) directed a study of the income tax laws, with emphasis on adjustments necessary to minimize or negate the impact to any taxpayer of establishing a single, uniform income tax return for all individuals. Senate Concurrent Resolution No. 4031 (2007) directed a study of political subdivisions that receive property tax revenue and any changes that may increase the efficiencies of local governments and reduce property taxes.

In addition to the study assignments, the Legislative Council assigned to the committee the responsibility under Section 3 of House Bill No. 1303 (2007) to monitor county implementation of soil type and classification data from detailed and general soil surveys for property tax assessment purposes.

Committee members were Senators Bob Stenehjem (Chairman), Dwight Cook, Ben Tollefson, Constance Triplett, and Herbert Urlacher and Representatives Larry Bellew, Wesley R. Belter, David Drovdal, Glen Froseth, Craig Headland, Gil Herbel, Jim Kasper, Scot Kelsh, Mark S. Owens, Arlo Schmidt, Benjamin A. Vig, Dave Weiler, and Dwight Wrangham.

The committee submitted this report to the Legislative Council at the biennial meeting of the Council in November 2008. The Council accepted the report for submission to the 61st Legislative Assembly.

PROPERTY TAX REFORM AND RELIEF STUDY

Background

The directive for this study was included in the major property tax relief legislation of 2007--Senate Bill No. 2032. Senate Bill No. 2032 was introduced by the Legislative Council upon the recommendation of the 2005-06 interim Finance and Taxation Committee. As introduced, the bill provided a general fund appropriation of approximately $74 million for property tax relief and provided for allocation of the appropriated amount among school districts. The bill provided adjustments to reduce school district property tax levy authority by the amount of property tax relief to be received by each school district. The bill established an allocation process based on the number of mills levied by each school district above 111 mills.

Senate Bill No. 2032

Senate Bill No. 2032 was the subject of extensive discussion and amendments. The bill was passed in a form substantially different from the bill as introduced. The bill as enacted contained provisions regarding these three areas--property taxes, income taxes, and funding.

Property Taxes

1. Homestead credit property tax income eligibility was increased $17,500 and the maximum value of property exempt was increased $75,000.
2. The amount of an assessment increase for property which triggers the requirement for written notice to the property owner was reduced from 15 percent to 10 percent. The time the notice must be delivered to property owners was increased from 10 days to 15 days before the meeting of the local board of equalization.
3. In school district elections for unlimited or increased general fund levy authority, the ballot must specify the number of mills, percentage increase in dollars levied, or that unlimited levy authority is proposed for approval and the number of taxable years for which the approval is requested. Approval of unlimited or increased school district general fund levy authority was limited to 10 taxable years. The number of petition signatures required to place the question of discontinuing increased or unlimited school district general fund levy authority on the ballot was reduced from 20 percent of the persons in the school census to 10 percent of the number of electors who cast votes in the most recent school district election.
4. Real estate and mobile home tax statements must provide three columns showing for the current year and the two preceding years the property tax levy in dollars against the property by the county and school district and any city or township that levied taxes against the property.

Income Taxes

1. An income tax marriage penalty credit of up to $300 per couple was provided to offset any marriage penalty incurred for couples with incomes up to $154,200. The credit is determined by comparing the tax on the couple's joint North Dakota taxable income and the tax that would apply if the couple's income were separated and taxed at the single filer rate.
2. A homestead income tax credit was provided for individuals for taxable years 2007 and 2008 in the amount of 10 percent of property taxes or mobile home taxes that became due during the tax year and have been paid on the individual's homestead--i.e., the dwelling occupied as a primary residence in this state and any residential or agricultural property owned by the individual in this state. Property taxes eligible for the credit do not include special assessments. The amount of the homestead income tax credit for a year may not exceed $1,000 for married persons filing a joint return or $500 for a single individual or married individuals filing separate returns. Persons owning property together must share one credit for that parcel of property in

percentages equal to their ownership interests in the property.

The amount of the homestead income tax credit exceeding the taxpayer's income tax liability may be carried forward for up to five years or the taxpayer may request that the Tax Commissioner issue the taxpayer a certificate in the amount of the excess. A certificate issued to a taxpayer may be used by the taxpayer against property or mobile home tax liability during the ensuing taxable year by delivering the certificate to the county treasurer of the county in which the taxable property or mobile home is subject to taxes. The county treasurer is to forward redeemed certificates to the Tax Commissioner, who will issue payment to the county in the amount of the certificates. The estimated reduction in general fund revenues for 2007-09 is $112 million from the homestead income tax credit. If the total amount of homestead income tax credits claimed by November 15, 2008, exceeds $47 million, the rate of the credit is subject to adjustment to limit the amount of revenue impact in the second year of the biennium.

3. A commercial property income tax credit was provided for an individual or corporation for taxable years 2007 and 2008 in the amount of 10 percent of commercial property taxes or commercial mobile home taxes that became due during the income tax year and have been paid. Property taxes eligible for the credit do not include any special assessments. The amount of the credit for commercial property for a year may not exceed $1,000 for any taxpayer and is limited for individuals to $1,000 for married persons filing a joint return or $500 for a single individual or married individuals filing separate returns. Persons owning property together must share one credit for that property in percentages equal to their ownership interests in the property. A passthrough entity entitled to the commercial property income tax credit must allocate the amount of the credit in proportion to ownership interests in the passthrough entity. The amount of the commercial property income tax credit exceeding the taxpayer's tax liability may be carried forward for up to five years. If the total amount of credits claimed for commercial property exceeds $7 million on November 15, 2008, the Tax Commissioner may adjust the maximum amount of the credit to control the revenue impact from the credit for the second year of the biennium.

Funding

1. An appropriation of $3,604,000 was provided to the Tax Commissioner for enhanced funding for the expansion of the homestead tax credit for the 2007-09 biennium.
2. An appropriation of $1,100,000 was provided to the Tax Commissioner for the administrative costs related to the property tax and income tax changes made by the bill.
3. A transfer of $115 million was made from the permanent oil tax trust fund to the state general fund to offset the anticipated revenue loss to the state general fund from the income tax credits provided for the 2007-09 biennium.

Property Tax Determination and Collection

The property tax liability of a property owner is determined by multiplying combined mill rates for all taxing districts in which the property is located times the taxable value of the property. All locally assessed property taxes are collected by the county and distributed among appropriate taxing districts. Property taxes are due January 1 following the year of assessment and are payable without penalty until March 1 of the year they are due. If property taxes are paid in full by February 15, the taxpayer is entitled to a 5 percent discount. Penalties begin to accrue if property taxes are not paid by March 1. Taxpayers have the option of paying property taxes in installments.

Determination of Mill Rate

The mill rate for a taxing district is established through the budget process. Each taxing district prepares a proposed budget based on anticipated expenditures for the upcoming fiscal year. Hearings are held on the proposed budget and adjustments are made as needed. The deadline for amendments to budgets and for sending copies of the levy and budget to the county auditor is October 10. From October 10 to December 10, the county auditor prepares tax lists, which must be delivered to the county treasurer by December 10 and mailed to property owners by December 26.

The amount budgeted by a taxing district may not result in a tax levy exceeding levy limitations established by statute. Since 1981 the Legislative Assembly has provided optional authority to levy taxes with a maximum amount determined by comparison with a base year levy amount in dollars.

To determine the mill rate for a taxing district, the county auditor determines whether the amount levied is within statutory levy limitations and, if it is, the county auditor divides the total property taxes to be collected for the taxing district by the taxing district's total taxable valuation. This generates a percentage that is the mill rate for the district.

Local Assessment

Real property must be assessed with reference to its true and full value on February 1 of each year. Residential and commercial property is assessed by local assessors. True and full value is determined by considering the earning or productive capacity, if any; the market value, if any; and all other matters that affect the actual value of the property. For agricultural property, true and full value is based on a productivity formula. The assessed value of property is equal to 50 percent of the true and full value of the property (North Dakota Century Code (NDCC) Section 57-02-01).

Taxable valuation of property is a percentage of assessed valuation, which is 9 percent for residential and 10 percent for agricultural, commercial, and centrally assessed property. The mill rate for the taxing district is applied to the taxable valuation to determine the tax liability for property.

True and full value of agricultural property is based on a productivity formula based on the capitalized average annual gross return of the land. Annual gross return is determined from crop share rent, cash rent, annual gross income, or annual gross income potential. Average annual gross return for each county is determined by averaging annual gross returns for the county for 8 of the most recent 10 years. An index of production prices paid by farmers is used to adjust annual gross return. Annual gross return is then capitalized using 10 of the most recent 12 years for the gross agribank mortgage rate of interest. However, the minimum capitalization rate under the formula is set at 8.3 percent. Personnel from North Dakota State University (NDSU) use the formula to establish an average agricultural value per acre for cropland and noncropland on a statewide and countywide basis. This information is provided to the Tax Commissioner by December 1 of each year and then provided by the Tax Commissioner to each county director of tax equalization. The county director of tax equalization provides each assessor within the county an estimate of the average agricultural value of agricultural lands within the assessor's assessment district. The local assessor must determine the relative value of each assessment parcel within that assessor's jurisdiction. In determining relative values, local assessment officials are to use the following considerations, in descending order of significance--soil type and soil classification data, a schedule of modifiers approved by the state supervisor of assessments, and actual use of the property by the owner.

Central Assessment

Property of railroads, public utilities, and airlines is assessed by the State Board of Equalization as required by Article X, Section 4, of the Constitution of North Dakota. The owner of centrally assessed property must file an annual property report with the Tax Commissioner by May 1. The Tax Commissioner prepares a tentative assessment for the property by July 15. Notice of the tentative assessment is sent to the property owner at least 10 days before the State Board of Equalization meeting. On the first Tuesday in August, the State Board of Equalization meets to receive testimony on the value of centrally assessed property and to finalize assessments. The Tax Commissioner certifies the finalized assessments to the counties to reflect the portion of centrally assessed property for each property owner which is taxable in that county.

Property Tax Statistics and Political Subdivision Revenues

In taxable year 2006, political subdivisions levied over $715 million in property taxes and special taxes. The constitutional one-mill levy for the State Medical Center was imposed in the amount of $1.8 million, bringing the total property and special taxes imposed to more than $717 million. The following table shows the percentage of this amount levied by each type of political subdivision and the percentage increase in property taxes and special taxes levied by each type of political subdivision from 1993 through 2006. Because the State Medical Center levy is always imposed at a rate of one mill, the 81.1 percent increase shown in the table for the State Medical Center can be assumed to be approximately equal to the increase in statewide taxable valuation of property.

	Percentage of Statewide Property Taxes and Special Taxes[1] Levied in 2006	Percentage Increase in Property Taxes and Special Taxes[1] Levied 1993 Through 2006
School districts	55.57%	94.3%
Counties	23.71%	78.2%
Cities	13.08%	78.6%
City park districts	4.56%	116.3%
Townships	1.74%	33.4%
Rural fire protection	.60%	78.0%
Garrison Diversion	.20%	108.3%
Soil conservation districts	.19%	142.0%
State Medical Center	.25%	81.1%
Other[2]	.10%	50.0%

[1]"Special taxes" include mobile home taxes, rural electric cooperative taxes, woodland taxes, and payments in lieu of taxes.

[2]"Other" includes West River/Southwest Water Authority, hospital districts, rural ambulance districts, and recreation service districts.

From 1993-95 to 2007-09 there has been an increase of 66.2 percent in state appropriations and revenue allocations to political subdivisions. This can be compared with an increase of 88.1 percent in political subdivisions' property taxes and special taxes levied from 1993 to 2006.

Home Rule Sales Taxes

Another significant source of revenue for cities and counties is revenue from home rule sales taxes. Grand Forks imposed the first city home rule sales tax in 1985. In 1990, six cities imposed home rule sales taxes. By 2008 home rule sales taxes have become a significant revenue source for 118 cities and 3 counties. The following table illustrates the growth in home rule sales tax collections for selected years:

Fiscal Year	Home Rule Sales Taxes
1996	$36,534,413
2000	$58,711,263
2004	$68,644,864
2006	$87,563,544

Special Assessments

A growing source of revenue to cities is from special assessments. From 1998 to 2006, special assessments imposed have increased by 76.8 percent statewide and it appears there are varying levels of reliance on special assessments revenue among cities. For example, on a statewide basis more than $10 in property taxes is collected for every $1 collected in special assessments. In almost one-fourth of counties, the ratio is more than

$50 in property tax collections for each $1 in special assessments collections. In Stark County, the ratio is 85-to-1. In Ward County, the ratio is 42-to-1. In Morton County, the ratio is almost 7-to-1. In Cass County, the ratio is almost 5-to-1.

Committee Consideration

From 1983 through 2006 property taxes collected in North Dakota more than tripled from about $230 million to more than $700 million. The most notable change during that time period among the four property classifications is that agricultural property went from paying 37 percent to 25 percent of all property taxes and residential property went from paying approximately 32 percent to 45 percent of all property taxes.

Much of the reason for the shift in property tax burden to residential property is attributable to the fact that there has been a significant increase in the amount of residential property and the amount of agricultural property has remained about the same. The other significant factor is that the market value of all property has increased substantially, but agricultural property is the only property classification that is not assessed based on market value. For 2007 it appears that 64 percent of increased residential property taxable value was due to valuation increases of existing property and approximately 36 percent of increased residential property taxable value was attributable to new residential property.

Another means of comparing the relative burden of property taxes among classifications and among taxing jurisdictions is determination of an effective tax rate for property. An effective tax rate is determined by dividing total property taxes by the true and full valuation of the property. The resulting percentage is the effective tax rate. The effective tax rate varies among taxing districts. On a statewide basis, the 2007 effective tax rate was 1.9 percent for residential property, 2.21 percent for commercial property, and 1.61 percent for agricultural property. However, the effective tax rate for agricultural property for 2007 based on market value was .81 percent because the market value for agricultural property is approximately twice the true and full value of agricultural property determined under the agricultural property valuation formula.

The committee obtained an analysis of valuation and property tax payment changes for the years 1997 to 2007 for actual parcels of agricultural and residential property from six different counties. During those years pastureland had the lowest rate of increase in valuation (29 percent) and property taxes paid (28 percent). Cropland had an increase of 31 percent in valuation and 30 percent in property taxes paid. City residential properties had an increase of 43 percent in valuation and 38 percent in property taxes paid. Rural residential property had an increase of 50 percent in valuation and 47 percent in property taxes paid.

The state's share of elementary and secondary education funding declined from 58.5 percent in 1981-82 to 39.7 percent in 2005-06. During this time period, school district property taxes levied increased from $63 million per year to $329 million per year despite the fact that state funding increased from $207 million to $342 million and federal source funding increased from $23 million to $120 million.

The Tax Department administered the property tax relief credits against income tax liability under Senate Bill No. 2032. The department believes the property tax relief program was successful in providing tax relief to citizens. Preliminary reports were that more than $5 million had been provided to individual taxpayers in property tax certificates and more than $37 million in income tax credits had been provided to individual and corporate taxpayers. Although there were still tax returns to be filed, the Tax Department believed at the time that it would not be necessary to adjust the credit for the second year of the biennium. However, the department described problems encountered in administration of the property tax relief programs. Some of the issues may be resolved through legislative changes, but many of the issues cannot be solved due to inherent differences between property tax and income tax concepts and the numerous ways in which title to property can be held. The Tax Department recommended that without substantial changes to the program, the income tax is not the best delivery system for property tax relief.

During the interim the Governor announced plans to introduce legislation during the 2009 Legislative Assembly to provide property tax relief through allocations of funds to school districts and required reductions in school district property tax levies. The Lieutenant Governor described the proposal to the committee, calling for allocation of $200 million in the 2009-11 biennium for statewide school district mill levy reductions to replace the current property tax relief allocation based on the income tax system. Under the plan, funds would be distributed on a per student basis with factors used for weighted student units to fit a permanent education funding formula combined with a reduction in school district general fund property tax levy authority equal to $200 million. Later in the interim, the Governor suggested that the property tax relief amount would be increased to $300 million. The Governor also recommended additional funding of $100 million for school districts without the requirement of a property tax levy reduction. The Governor's Commission on Education Improvement was examining the mechanics of delivery of property tax relief under the proposal.

In 2008 petitions were filed to place an initiated measure on the November 4, 2008, general election ballot to reduce individual income tax rates by 50 percent and corporate income tax rates by 15 percent. The estimated fiscal effect of the measure for the 2009-11 biennium is a reduction in state general fund revenues by more than $414 million. One of the most significant administrative difficulties with property tax relief provided through the income tax system under Senate Bill No. 2032 is the large number of taxpayers whose refund exceeds income tax liability and requires issuance of a property tax credit certificate. The Tax Department estimated that if the initiated income tax measure is approved by the voters, an additional 15,000 certificates would have to be issued to taxpayers.

The two most practical approaches to provide property tax relief are by allocations to school districts to reduce school district tax levies or by allocation of property tax credits through the income tax system. Both options were complicated by developments during the interim. The Governor has announced a plan to provide allocations to school districts to reduce property tax levies. Details of how the funds will be allocated among school districts and how property tax levy limitations will be imposed were not finalized by the Governor's Commission on Education Improvement when the Taxation Committee held its final meeting. This made it difficult for the committee either to react to the proposal or initiate consideration of a similar proposal. The income tax option was complicated by the filing of a petition that placed an initiated measure on the general election ballot to cut income tax rates by half. The income tax option also was complicated by difficulties encountered by the Tax Department in administering the income tax relief program under 2007 legislation.

Conclusion

The committee makes no recommendation regarding property tax reform and relief.

OIL AND GAS TAX ALLOCATION STUDY

Background

North Dakota imposes two separate taxes on oil production--the oil extraction tax and the oil and gas gross production tax. Only under the oil and gas gross production tax are any direct revenue allocations made to political subdivisions.

Oil Extraction Tax Allocation

On November 4, 1980, the voters of North Dakota approved initiated measure No. 6 on the general election ballot and established an oil extraction tax as a companion tax to the oil and gas gross production tax that had existed since 1953. The oil extraction tax rate was established at 6.5 percent of the gross value of oil at the well.

In June 1990 the Constitution of North Dakota was amended to establish the resources trust fund as a constitutional trust fund and to provide that the principal and income of the fund could be spent only upon legislative appropriations for constructing water-related projects, including rural water systems and energy conservation programs. The constitutional provision, Article I, Section 22, of the Constitution of North Dakota, allows the Legislative Assembly to determine the share of extraction or production tax revenues which will go to the resources trust fund.

In November 1994 the voters of North Dakota approved a constitutional amendment, Article X, Section 24, of the Constitution of North Dakota, to provide that 20 percent of oil extraction tax collections be divided in equal amounts to the common schools trust fund and the foundation aid stabilization fund (used to offset any foundation aid funding reductions resulting from allotments pursuant to NDCC Section 54-44.1-12).

In 1995 the Legislative Assembly established the current allocation formula for oil extraction taxes which is 20 percent to the resources trust fund; 20 percent pursuant to Article X, Section 24, of the Constitution of North Dakota; and 60 percent to the state general fund.

Oil and Gas Gross Production Tax Allocation History

The oil and gas gross production tax was imposed in 1953 at a rate of 4.25 percent of gross value at the well of oil and gas. In 1957 the rate of the tax was increased to the current rate of 5 percent. The total net proceeds collected from the gross production tax increased from $306,000 in fiscal year 1954, to over $76 million in fiscal year 1982, and to over $104 million in fiscal year 2006. Current forecasts estimate gross production tax collections to exceed $250 million per year for the 2009-11 biennium.

From 1957 to 1981 revenue from the first 1 percent of gross value at the well of oil and gas produced was credited to the state general fund and the balance was distributed as follows:

1. Of the first $200,000, 75 percent to the producing county and 25 percent to the state general fund.
2. Of the next $200,000, 50 percent to the producing county and 50 percent to the state general fund.
3. All remaining revenue, 25 percent to the producing county and 75 percent to the state general fund.

A 1981 amendment did not change the disposition of the first 1 percent of gross value at the well of oil and gas produced which is credited to the state general fund, but remaining tax revenue from oil and gas produced in each county was reallocated as follows:

1. Of the first $1 million, 75 percent to the producing county and 25 percent to the state general fund.
2. Of the next $1 million, 50 percent to the producing county and 50 percent to the state general fund.
3. All remaining revenue, 25 percent to the producing county and 75 percent to the state general fund.

The overall effect of the 1981 amendment was to give each producing county $600,000 per year more than before 1981 if that county generated $2.5 million or more in annual gross production tax revenue.

Caps, or maximums, upon annual revenues producing counties could receive from the gross production tax were imposed in 1981 based on county population. Amounts exceeding a county cap were retained in the state general fund. Although the caps were scheduled to expire in 1983, the caps were increased by $100,000 in each population category and were extended to 1985. In 1985 the caps were made permanent at the following levels:

1. For counties with a population of 3,000 or fewer - $3,900,000.
2. For counties with a population from 3,001 to 5,999 - $4,100,000.
3. For counties with a population of 6,000 or more - $4,600,000.

Beginning in 1981, county revenues were distributed 45 percent to the county general fund, 35 percent to the school districts within the county, and 20 percent to the incorporated cities within the county. The 1981 legislation also imposed caps upon revenues that could be received by school districts and cities. School districts were limited to a maximum of 70 percent of the county per student cost times the number of students in attendance or in the school census, whichever was greater, unless the district had an average daily attendance or school census fewer than 400, in which case that district could receive up to 120 percent of the county average per student cost times the number of students in attendance or in the school census, whichever was greater. Incorporated cities were limited to a distribution not exceeding $500 per capita in any fiscal year. Amounts exceeding the caps for school districts or cities reverted to the county general fund.

In 1989 an allocation was provided of up to $5 million per biennium from the first 1 percent of oil and gas gross production tax revenues to the oil and gas impact grant fund and a continuing appropriation was provided in that amount for allocation by the Energy Development Impact Office to oil and gas-impacted political subdivisions. In 2005 the allocation for the oil and gas impact grant fund was increased from $5 million to $6 million per biennium beginning with the 2007-09 biennium.

Senate Bill No. 2178 (2007) allowed a county that reaches the annual cap on oil and gas gross production tax revenue to receive an additional $1 million in revenues if the county levies a total of at least 10 mills for county road and bridge, farm-to-market and federal aid road, and county road purposes. The additional $1 million of revenues to counties is not for allocations for political subdivisions in the county but must be credited entirely to the county general fund. Proponents of the bill said counties are experiencing increased road impact and increased road maintenance costs.

House Bill No. 1044 (2007) increased allocations to a producing county from oil and gas gross production taxes by revising the schedule for division of revenues between the producing county and the state general fund as follows:

1. The first $1 million is allocated to the producing county.
2. Of the next $1 million, 75 percent goes to the producing county and 25 percent to the state general fund.
3. Of the next $1 million, 50 percent goes to the producing county and 50 percent to the state general fund.
4. All remaining revenue is distributed 25 percent to the producing county and 75 percent to the state general fund.

The net effect of House Bill No. 1044 for a county is a potential increase in allocations to the county of up to $750,000 per year. The allocation change in House Bill No. 1044 became effective August 1, 2008.

Special Provisions Affecting State General Fund Allocation of Oil and Gas Tax Revenues

Under NDCC Section 57-51.1-07.2, all revenue deposited in the state general fund exceeding $71 million during a biennium from combined oil and gas gross production taxes and oil extraction taxes must be transferred to the permanent oil tax trust fund. Earnings of the permanent oil tax trust fund may be transferred to the state general fund at the end of each fiscal year, but the principal of the permanent oil tax trust fund may not be expended except upon a two-thirds vote of the members elected to each house of the Legislative Assembly. Because this is a statutory provision, the two-thirds vote requirement does not apply to subsequent legislative action.

Under NDCC Section 57-51.1-07.3, 2 percent of the state's share of oil and gas gross production tax and oil extraction tax revenues must be deposited in the oil and gas research fund, not exceeding $3 million per biennium. All money deposited in the oil and gas research fund is provided as a continuing appropriation to the Oil and Gas Research Council.

In 2007 the Legislative Assembly approved House Concurrent Resolution No. 3045 for placement of a measure on the state general election ballot in November 2008 to establish a constitutional permanent oil tax trust fund. If approved by the voters, the measure will require all oil and gas production or extraction tax revenue exceeding $100 million during a biennium to be transferred to the permanent oil tax trust fund. The measure would require interest earnings of the permanent oil tax trust fund to be transferred to the general fund at the end of each fiscal year. The measure would prohibit expenditures from the principal of the permanent oil tax trust fund except upon a vote of three-fourths of the members elected to each house of the Legislative Assembly and not more than 20 percent of the principal could be expended during any biennium. If approved by the voters, the measure will become effective on July 1, 2009. If the measure is approved by the voters, Senate Bill No. 2178 repeals the statutory provision for a permanent oil tax trust fund under NDCC Section 57-51.1-07.2 effective July 1, 2009.

Energy Development Impact Grant History

In 1975 the Legislative Assembly established a coal severance tax and a coal impact aid program. The Coal Development Impact Office was established within the Governor's office and was provided an appropriation of $5 million for grants to cities, counties, school districts, and other taxing districts impacted by coal development.

In 1979 the Coal Development Impact Office was moved from the Governor's office to the Board of University and School Lands. In 1981 the Coal Development Impact Office was renamed the Energy Development Impact Office and the office was authorized to provide impact grants for coal development and oil and gas development. By 1987 impact grant funding dwindled to approximately $1 million for coal and $2 million for oil.

In 1989 coal taxes were restructured and coal impact grants were eliminated. Since 1989 oil impact grants

have been administered by the Energy Development Impact Office under a continuing appropriation of $5 million per biennium for grants. Under 2007 legislation the continuing appropriation for oil impact grants was increased to $6 million per biennium.

Committee Consideration

The North Dakota Association of Oil and Gas Producing Counties commissioned a study by an NDSU research scientist to identify oil and gas impact costs to producing counties. The study attempted to isolate local government costs attributable to oil and gas development and exclude consideration of the normal cost increases of local government which are experienced by all political subdivisions. The study identified increased workloads and costs for general county offices and county road departments. The study concluded that the total general county office impact costs and county road impact costs attributable to oil and gas impact falls within a range of $36.9 million to $45.2 million per year.

The committee heard a substantial amount of testimony from local government officials from the oil and gas impact area. Local officials described the many kinds of increased costs to local government from oil and gas development impact, not the least of which is that it is difficult for local government to attract and retain employees because salaries offered by local government are not competitive with salaries offered in the oil industry.

The Department of Transportation provided information on extraordinary road and bridge impact costs. The drilling rig count in North Dakota is at a level that has not been seen since about 1983. Oversized vehicle permits issued by the department increased more than 16 percent from 2006 to 2007. The department estimated truck movement associated with oil and gas production at a daily average of 4,575 truckloads. The total of materials and equipment needed at the site of a vertical well is 400 truckloads and for a horizontal well the total is 600 truckloads to 1,000 truckloads. In addition to equipment hauled to drilling sites, oil, water, and equipment must be hauled away from drilling sites. Trucks haul approximately 65 percent of oil production, while pipelines carry approximately 35 percent of oil to refineries. Saltwater recovered in drilling operations must be disposed of, and approximately 35 percent is hauled by truck totaling more than 23,000 truckloads per year.

The number of oil drilling rigs in the state has been on a steady increase during 2007 and 2008. Horizontal wells in the Bakken Formation took an average of 65 days to complete in 2007 and the industry has reduced the drilling time to an average of 29 days for those wells in 2008. The Department of Mineral Resources expects that before the activity in current drilling areas is completed, every section of land in Dunn County and Mountrail County will have an oil well on it. The department expects the trend in drilling activity will be for drilling permit areas to move north and west from Mountrail County, and that Burke County and Divide County will probably be the next areas of extensive oil exploration. As oil production increases and the production areas expand, a growing level of impact will be experienced by a greater number of counties.

The committee reviewed the details of the oil and gas impact grant rounds conducted in 2007 and 2008. In 2007, 377 grant requests were received requesting a total of more than $40 million. The total amount requested was inflated by a request for $17.4 million from Williams County for a combined law enforcement and correctional center. The total amount awarded for all grants in 2007 was $2,471,000, which was the full amount available. Almost half of the amount awarded in 2007 went to townships for township road impacts because townships receive no direct allocation of oil tax revenues.

In 2008, 376 grant requests were received totaling $29.1 million. The Energy Development Impact Office awarded 265 grants totaling $3 million to 241 political subdivisions. Over 75 percent of grant funds were allocated to transportation projects and over 17 percent went to support fire protection services. Disqualifying factors applied in evaluating grant applicants include a large cash balance on hand, a low mill levy, or large amounts of unused grants from previous years.

The committee obtained fiscal information on removing statutory caps on oil and gas gross production tax allocations to counties and to the impact grant fund. Removing caps on statutory allocations of revenue to producing counties would reduce state general fund or permanent oil tax trust fund revenue by $42 million per year. Most of the benefit of increased revenues to counties would be received by Bowman and Mountrail Counties, which would receive a combined total of $30 million per year additional revenue. Eliminating the $6 million cap on deposits in the oil and gas impact grant fund would increase revenues to the impact grant fund by $28.4 million per biennium, with a corresponding reduction in permanent oil tax trust fund revenue. Impact funding is viewed as a critical component of funding for political subdivisions because such funding is targeted to areas of demonstrated impact need that is not adequately addressed by direct allocations.

Recommendation

The committee recommends Senate Bill No. 2051 to eliminate statutory caps on oil and gas gross production tax allocations to counties and to eliminate the cap on allocations to the oil and gas impact grant fund.

INCOME TAX STUDY

Background

In 1919 the state's first income tax law was enacted. In 1923 the state income tax was linked to the federal income tax provisions. Income tax rates were adjusted in 1933, 1953, 1973, and 1978.

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 optional method of computing individual income tax liability provided that individual liability was equal to 7.5 percent of an individual's

adjusted federal income tax liability. The preexisting method of determining income tax liability based upon a percentage of federal taxable income ("long-form" method) was retained, and, since that time, taxpayers have had the option of filing under either of the two different methods. For the great majority of individuals, the short form provides a considerably lower tax liability than the tax determined using the long-form return.

In 1983 several legislative changes combined to increase individual tax liability:

1. Elimination of the $100 energy cost relief credit created by 1980 initiated measure No. 6.
2. Increase of the tax rate on the short-form return from 7.5 percent to 10.5 percent of adjusted federal income tax liability.
3. Adjustment of the rates on the individual long-form return to provide rates ranging from 2 percent of taxable income up to $3,000 and 9 percent on taxable income in excess of $50,000.

During a 1986 special session, legislation was passed to provide mandatory state income tax withholding for all employees subject to federal income tax withholding, to increase the short-form tax rate from 10.5 percent 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. The 1986 legislative changes were referred to the electorate and were approved by voters on March 18, 1987.

In 1987 a 10 percent surtax on state individual income tax liability was created to apply for taxable year 1987.

In 1989 the Legislative Assembly increased the short-form income tax rate from 14 percent to 17 percent of adjusted federal income tax liability and increased long-form rates by corresponding percentages. The legislation providing these rate increases was referred and disapproved by the voters in the December 1989 special election.

In 2001 the Legislative Assembly revised the application of the short-form method. This change eliminated reliance on federal income tax liability as a starting point for the short-form return and substituted use of federal taxable income as the starting point to calculate North Dakota taxable income. This change was made because a substantial federal income tax reduction was anticipated, which would have had a substantial negative revenue impact to the state, the amount of which was unknown during the 2001 legislative session. The revised short-form method is roughly equivalent to the previous method because it applies a set of graduated tax rates that are 14 percent of the federal tax rates at the time and the rates are applied to five income brackets that were established to mirror federal brackets at that time. In addition, the 2001 legislation established use of the same inflation indexing factor that applies under federal law so that the income brackets will keep pace with changes to federal income brackets. To reflect the fact that the vast majority of taxpayers file under the short-form method, the statutory reference to an "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 with references to "Form ND-1" (previous short form) and "Form ND-2" (previous long form). The income brackets established by the 2001 legislation for Form ND-1 are unchanged in the statutory provision (NDCC Section 57-38-30.3). However, the income amounts in the brackets are subject to indexing in the same manner federal income brackets are indexed, and because of application of annual indexing, actual income brackets for taxable year 2007 are substantially higher than the income brackets that appear in the statutory provision.

Recent Changes

In 2007 an income tax marriage penalty credit of up to $300 per couple was created to offset any marriage penalty incurred for couples with incomes up to $154,200. A homestead income tax credit was created for individuals for taxable years 2007 and 2008 in the amount of 10 percent of property taxes or mobile home taxes that become due during the tax year and have been paid on the individual's homestead--i.e., the dwelling occupied as a primary residence in this state and any residential or agricultural property owned by an individual in this state. The amount of the homestead income tax credit may not exceed $1,000 for married persons filing a joint return or $500 for a single individual or married individuals filing separate returns. The amount of the homestead income tax credit exceeding a taxpayer's income tax liability may be carried forward for up to five years or the taxpayer may request that the Tax Commissioner issue the taxpayer a certificate in the amount of the excess. A certificate issued to a taxpayer may be used by the taxpayer against property or mobile home tax liability during the ensuing taxable year by delivering the certificate to the county treasurer of the county in which the taxable property or mobile home is subject to taxes. The county treasurer is to forward certificates redeemed in payment of tax obligations to the Tax Commissioner, who is to issue payment to the county in the amount of the certificates. A commercial property income tax credit is provided for an individual or corporation for taxable years 2007 and 2008 in the amount of 10 percent of commercial property taxes or commercial mobile home taxes that became due during the income tax year and have been paid. The amount of the credit for commercial property for a year may not exceed $1,000 for any taxpayer and is limited for individuals to $1,000 for married persons filing a joint return or $500 for a single individual or married individuals filing separate returns. An individual and corporate income tax credit was created for angel fund investments, internship employment, and workforce recruitment for hard-to-fill employment positions, and the income tax credit for research and experimental expenditures was expanded to apply to individual taxpayers. The aggregate amount of seed capital investment tax credits allowed was increased from $2.5 million to $3.5 million for each calendar year and biofuels production facilities were added to businesses for which agricultural business investment tax credits are available. Angel fund

investments were allowed under the seed capital investment income tax credit. The purchaser of a geothermal, solar, or wind energy device installed after December 31, 2006, was allowed to claim the income tax credit for such devices if ownership of the device is transferred to the purchaser at the time installation is complete. Biomass energy devices were added to devices eligible for the income tax credit for geothermal, solar, or wind energy devices. Assignment of a wind energy device installation income tax credit was allowed but assignment may be made only to the purchaser of the power from the device under a power purchase agreement or a taxpayer that constructs or expands an electricity transmission line in North Dakota after August 1, 2007. An individual income tax deduction for up to $5,000, or $10,000 on a joint return, was created for contributions under a higher education savings plan administered by the Bank of North Dakota. The individual income tax credit for planned gifts to nonprofit organizations was expanded to provide a corporate income tax credit and to include gifts to qualified endowments. The credit for individuals was increased from 20 percent to 40 percent of the charitable gift and the maximum credit for individuals was increased from $5,000 per year to $10,000 per year or $20,000 for married individuals filing a joint return. The credit allowed for a corporation is 40 percent of a charitable gift to a qualified endowment and the maximum credit for a corporation is $10,000 per year. An individual and corporate income tax credit was created for operation of a microbusiness, defined as a business employing five or fewer employees inside an economically viable small community. A taxpayer certified as a microbusiness is entitled to a credit equal to 20 percent of new investment and new employment in the microbusiness during the taxable year, limited to not more than $10,000 in credits over any combination of years. An individual income tax exemption was provided for income of a taxpayer from activities or sources within the boundaries of any Indian reservation in this state if the taxpayer resides within the boundaries of any reservation in this state and is an enrolled member of a federally recognized Indian tribe.

Committee Consideration

North Dakota has two individual income tax systems, but both systems are essentially long forms. Both forms start with federal taxable income and have several credits and deductions in common. However, there are substantial differences in deductions and credits available on the two forms, and the two forms have vastly different tax rates. The tax rates on Form ND-1 continue to be among the lowest in the nation. The rates on Form ND-2 are at the high end when compared to tax rates around the country. Another significant difference is that Form ND-1 may be e-filed and is supported by electronic filing vendors, which is not the case for Form ND-2.

The committee examined all deductions and credits allowed on Form ND-1 and Form ND-2. Of the deductions available only on Form ND-2, the most significant deductions are for federal income taxes paid, medical expenses not allowed on the federal return, military retirement pay, and interest income from North Dakota financial institutions. The most significant tax credits available only on Form ND-2 are for long-term care insurance and contributions to nonprofit private high schools or colleges.

Despite the fact that more deductions and credits are available on Form ND-2, only approximately 2 percent of income tax returns are filed on Form ND-2 and those returns pay less than one-half of 1 percent of income tax collections.

Sampling by the Tax Department of income tax returns indicates that the average savings for the typical Form ND-2 filer over what the filer's liability would be on Form ND-1 is approximately $25. It appears there is generally a tax preparation cost involved in filing Form ND-2. Of approximately 6,500 Form ND-2 returns processed in 2007, only 233 were prepared by the taxpayers themselves. Costs associated with preparation of two income tax returns by tax practitioners probably offset or eliminate some of the savings for taxpayers.

Approximately two-thirds of Form ND-2 filings are by nonresidents. In addition, some individuals who file on Form ND-2 would achieve a reduced income tax liability if they filed on Form ND-1.

The estimated biennial fiscal effect of moving all deductions and credits from Form ND-2 to Form ND-1 is a revenue loss of approximately $99 million to $117 million.

It was estimated that the Tax Department would save approximately $25,000 per biennium if Form ND-2 were eliminated, and the department would have to administer only one income tax return form. It was estimated that if Form ND-2 were eliminated the fiscal effect to the state would be a revenue gain of approximately $150,000 per year.

If the voters of the state approve the initiated measure to reduce only Form ND-1 individual income tax rates by 50 percent, which is on the November 2008 general election ballot, there would be no taxpayer who would benefit from filing on Form ND-2.

The committee considered, but did not approve, a bill draft to eliminate Form ND-2 and make a small adjustment in Form ND-1 rates to make the bill approximately revenue-neutral. Committee members pointed out that even though the bill draft was approximately revenue-neutral to the state, some individual taxpayers would have a resulting income tax increase due to losing the option of filing Form ND-2.

Conclusion

The committee makes no recommendation regarding the income tax study.

POLITICAL SUBDIVISION EFFICIENCY STUDY

Background

The Constitution of North Dakota allows agreements, including those for cooperative or joint administration of any powers or functions, to be made by any political subdivision with any other political subdivision, with the state, or with the federal government. The Legislative

Assembly has enacted statutory provisions for joint powers agreements among political subdivisions and with tribal governments. Statutory authority is provided for joint exercise of governmental powers, joint issuance of bonds for projects, county or city home rule, combined county and city home rule, and transfer of local government powers to the county in which a political subdivision is located. In short, North Dakota law provides ample opportunities for political subdivisions to combine, consolidate, or receive approval from voters to exercise their authority in ways that are most efficient for the taxpayers.

Committee Consideration

The objective of the committee was to determine whether political subdivisions are using authority provided by law to achieve efficiency in local government administration, whether there are provisions of law that require change to provide greater opportunity for efficiency, and whether there are aspects of local government administration in which it would be appropriate to mandate consolidated or cooperative administration.

During the past 25 years, counties have taken the initiative to consolidate and share services in appropriate circumstances. Examples of intercounty consolidation of services exist in the state for social service administration, correctional services, child protection investigation, software sharing and hosting, child care assistance eligibility, 911 dispatch services, public health services, tax director services, in-home services, county superintendents of schools, county state's attorneys, and children's special health services. There are numerous examples of consolidation of services involving the county working with cities and other political subdivisions. These sharing arrangements involve services for mandated drug and alcohol testing, special operations support, technology support, marriage license software, office supply purchasing, workers' compensation and safety, 911 implementation, and record preservation. Counties also provided examples of internal consolidations resulting in a net reduction from 2003 to 2007 of 75 full-time county officials.

The North Dakota Association of Counties pointed out an issue faced by some counties with a constitutional residency requirement for county offices and filling the office of state's attorney when the county does not have an attorney who is a resident of the county. The committee deferred consideration of this issue in light of the study of this issue by the Advisory Commission on Intergovernmental Relations.

The North Dakota Association of Counties described a 1996 study done at NDSU regarding consolidation of counties and county services. The conclusion of the study was that forcing consolidation of counties and county services will not always result in reduced costs for county government services. The report pointed out that substantial cost-savings could be achieved for some services in some regions of the state, but those results cannot be expected for all services in all regions. It was suggested that it is most appropriate to provide flexibility for political subdivisions to work together to find methods to consolidate or combine services with other political subdivisions to achieve greater efficiency in providing services to the public.

Conclusion

The committee makes no recommendation regarding the study of political subdivision efficiency.

SOIL SURVEY IMPLEMENTATION FOR AGRICULTURAL ASSESSMENTS

Background

Since 1981 state law has required county assessment officials, whenever possible, to use soil type and soil classification data from detailed and general soil surveys in determining relative value of agricultural lands within the county. During consideration of legislation in 2007, the Legislative Assembly discovered that most counties have not implemented use of soil surveys in assessments and, as a result, there is a lack of uniformity among agricultural property assessments in the state. House Bill No. 1303 made it mandatory for counties to use soil survey information in agricultural assessments and set a deadline to require all counties to implement use of soil surveys by taxable year 2010 or a noncomplying county would incur withholding of 5 percent of the county's allocation from the state aid distribution fund until the county implements use of soil survey information.

Committee Consideration

At the request of the committee, the Property Tax Division of the Tax Department developed criteria to determine when a county has fully implemented soil survey use in assessments. The Tax Department worked with the North Dakota Association of Counties, assessment officials, and state geographic information system personnel to assist counties in implementing the use of soil surveys and agricultural assessments. After reviewing the status of each county, the Tax Department determined that 19 counties are in the early stages of implementation of use of soil surveys, 13 counties are in transition to full implementation, and 21 counties are fully compliant with use of soil surveys in agricultural assessments. Every county is at least in the process of implementing use of soil surveys. However, the committee was advised that several counties would not be able to meet the deadline of 2010 for full implementation of use of soil surveys and agricultural assessments.

Recommendation

The committee recommends Senate Bill No. 2052 to extend the deadline for county implementation of soil survey use in agricultural assessments from 2010 to 2012.

TRANSPORTATION COMMITTEE

The Transportation Committee was assigned three studies. Section 6 of House Bill No. 1012 (2007) directed a study of highway funding and transportation infrastructure needs, including those needs resulting from energy and economic development in the state. Section 2 of House Bill No. 1359 (2007) directed a study of Federal Motor Carrier Safety Regulations and exemptions for interstate and intrastate transportation in relation to this state's law and exemptions, including a review of any industry-specific applications of regulations and possible exemptions to current transportation activities within this state. Section 2 of Senate Bill No. 2188 (2007) directed a study of risk assessments for railroad facilities, the handling of hazardous cargo by railroads, and the ability of railroads to respond to potential accidents and emergencies, including sabotage, terrorism, and other crimes, and including an evaluation of whether whistleblower protection would provide a desirable response in employees to report dangerous conditions or violations of law relating to hazards, emergencies, and accidents.

In addition, the Legislative Council assigned to the committee the responsibility under Section 4 of House Bill No. 1012 to receive a report from the Department of Transportation regarding any additional full-time equivalent positions hired for highway construction and maintenance in lieu of entering contracts for those purposes.

The committee members were Senators David O'Connell (Chairman), Robert S. Erbele, Gary A. Lee, and Jim Pomeroy and Representatives Mark A. Dosch, Edmund Gruchalla, Kathy Hawken, Bob Hunskor, Keith Kempenich, William E. Kretschmar, Bob Martinson, Mark S. Owens, Dan J. Ruby, Arlo Schmidt, Dorvan Solberg, Elwood Thorpe, and Robin Weisz.

The committee submitted this report to the Legislative Council at the biennial meeting of the Council in November 2008. The Council accepted the report for submission to the 61st Legislative Assembly.

HIGHWAY FUNDING AND TRANSPORTATION INFRASTRUCTURE NEEDS STUDY

2005-06 Interim Committee Study and Activities

During the 2005-06 interim, the Legislative Council chairman directed a study of federal highway appropriations and state matching requirements. This study was assigned to the interim Transportation Committee. The committee reviewed federal highway appropriations that were greatly affected by the passage of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), which the President signed into law on August 10, 2005. The Act provided funding through federal fiscal year 2009. That Act was a continuation of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) and the Transportation Equity Act for the 21st Century (TEA-21). The federal highway trust fund is the source of funding for most of the programs in the Act. Federal motor fuels taxes are the major source of income to the highway trust fund. The major issue of the 2005-06 interim study was a projected shortfall of $10.6 million in state matching funds. As a result of changes in the federal formula funding and the lack of state highways that were roads acting as dam projects, the projected shortfall was reduced to $3.1 million. The Department of Transportation was able to meet the shortfall without additional funding.

Under the REAL ID Act of 2005, a state driver's license will become a national identification that is computer-accessible by all states. It would cost approximately $14 million to implement the REAL ID Act in this state. Although noncompliance with the Act will not result in the loss of federal funding, citizens of the noncompliant state will not be able to use their driver's licenses for federal purposes, e.g., boarding an airplane.

A review of state funding sources and alternatives reviewed taxation of coal, oil, and gas as a potential source of highway funding. A portion of the oil and gas gross production tax proceeds is transferred to the oil and gas impact grant fund and used for road repair and maintenance. Motor vehicle fuels taxes, a major source of highway funding, may be impacted by price increases. The motor vehicle fuels tax is applied on a gallon basis, and people have the tendency to consume less by driving less as the cost of fuel increases.

The increase in prices for raw materials and labor affects bid amounts for projects. As a result of increased costs, $24 million in construction projects originally scheduled for 2006 were delayed and the Department of Transportation anticipated that over $91 million in projects for 2007 and 2008 would be scheduled at a later date. Delays in construction projects have secondary and downstream impacts. Every $1 million spent on road construction creates 47.5 jobs and for every $1 spent on preventative maintenance, $4 to $5 is saved in construction costs in the near future. In addition, national studies have demonstrated that every $1 invested in transportation yields approximately $5.40 in reduced delays, improved safety, and reduced vehicle operating costs.

In addition to studying highway funding, the 2005-06 interim Transportation Committee monitored certain infrastructure projects, including the Liberty Memorial Bridge. Bridges are monitored on a monthly basis and are inspected every two years. At that time, the department had 59 certified bridge inspectors to inspect approximately 5,300 bridges.

The Upper Great Plains Transportation Institute reported on the outcome of the institute's study of how improvements to the transportation infrastructure of this state might enhance the business climate and the state's competitive position in economic development. The study made the following highway recommendations:

- A preservation program that keeps pavement in good condition generates substantial economic benefits.

- Highway access to key industrial and agricultural facilities should be analyzed on a case-by-case basis.
- The benefits and costs of eliminating or mitigating spring load limits on key highway segments should be analyzed on a case-by-case basis; however, load limit elimination on highway segments serving key agricultural and manufacturing locations may be cost-effective.
- New mechanistic pavement analysis techniques offer potential for improved forecasting of pavement lives and may make it possible to shorten the durations of spring load restrictions in some cases and identify more cost-effective designs. As such, it is important to develop data and input to fully utilize these advanced procedures.
- Selective case studies should be undertaken of highway load limits in counties so that a cost-effective analysis plan can be developed. A great deal of information must be developed in order to assess the benefits and costs of uniform county load limits.

2007 Legislation

House Bill No. 1012 was the appropriation bill for the Department of Transportation. Section 4 of House Bill No. 1012 authorized the Department of Transportation to hire additional full-time equivalent positions for highway construction, in addition to those authorized by the Legislative Assembly, if it would be cost-effective as compared to entering contracts for construction and maintenance.

Section 14 of House Bill No. 1012 appropriated $1 million from the highway fund to the public transportation fund and Section 10 of the bill changed the formula for payments to transportation providers of public transportation funds from a fixed amount to an amount that adjusts depending on the amount of the appropriation. Section 13 of the bill reduces the motor vehicle excise tax revenue deposited in the state general fund from 100 percent to 90 percent and requires the balance of 10 percent into the highway fund.

At least four bills were enacted which related to highway funding and infrastructure needs--House Bill Nos. 1044, 1049, and 1166 and Senate Bill No. 2178.

House Bill No. 1044 increased allocations to counties from oil and gas gross production taxes by up to $75,000 per year.

House Bill No. 1049 reduced the special fuels tax for diesel fuel used for heating fuel from four cents to two cents per gallon from January 1, 2008, through June 30, 2009, and after that date exempts such diesel fuel from the special fuels tax. The bill reduced the rate of tax for propane sold for use as heating fuel from 2 percent to 1 percent effective January 1, 2008, and exempts such propane from the special fuels tax as of July 1, 2009. The fiscal effect on the highway tax distribution fund was $1,987,000 for the 2007-09 biennium.

House Bill No. 1166 required the director of the Department of Transportation to include a four-lane alternate for the next major reconstruction project for United States Highway 52.

Senate Bill No. 2178 allowed a county that reaches the annual cap on the oil and gas gross production tax revenue to receive an additional $1 million in revenues if the county levies a total of at least 10 mills for county road and bridge, farm-to-market and federal aid road, and county road purposes. Any additional amount received by the county is not for allocation to political subdivisions within the county but must be credited entirely to the county general fund.

Section 3 of Senate Bill No. 2178 provided for an interim study that was assigned to the interim Taxation Committee. The study is of the allocation of oil and gas tax revenues to or for the benefit of political subdivisions with emphasis on determining whether allocations sufficiently address oil and gas development infrastructure impact to political subdivisions.

In addition to the Transportation Committee's studies, the Advisory Commission on Intergovernmental Relations studied funding for rural township and county roads and bridges, funding for public transportation, and increasing from four-tenths to five-tenths of one cent the amount of sales tax that is deposited in the state aid distribution fund. The state aid distribution fund is distributed to counties and cities and is used in part for roads. Because of these studies by the Taxation Committee and the Advisory Commission on Intergovernmental Relations, the Transportation Committee focused its study on the funding and infrastructure needs of state highways.

State Matching Sources

In general, fuels taxes and registration fees are deposited in the highway tax distribution fund. However, $13 of each registration fee for a passenger motor vehicle, bus, and truck weighing over 20,000 pounds goes directly into the state highway fund. The highway tax distribution fund is distributed 63 percent to the state, 23 percent to the counties, and 14 percent to the cities. Money distributed to the state is deposited in the state highway fund.

Certain income sources recently have been increased or implemented to match federal funds. Senate Bill No. 2012 (2005) increased registration fees $10, classified pickups as passenger motor vehicles but limited the increase due to this reclassification to one-half for the 2005-07 biennium, and deposited $13 of each registration fee in the state highway fund. The bill increased motor vehicle fuel and special fuels tax rates from 21 cents to 23 cents per gallon. The bill allowed for grant or revenue anticipation financing for the Liberty Memorial Bridge improvement project and the United States Highway 2 project improvements. Although the bill would have redirected money collected as motor vehicle excise taxes from the general fund to the state highway fund, this transfer was vetoed by the Governor because the "diversion of funds increases the risk of an allotment, or could force the calling of a special session of the legislature to deal with future revenue requirements." Section 13 of House Bill No. 1012 (2007) transferred 10 percent of motor vehicle excise taxes to

the state highway fund for the 2007-09 biennium so as to increase matching funds.

TESTIMONY AND DISCUSSION

Upper Great Plains Transportation Institute Project

The committee received testimony from the Upper Great Plains Transportation Institute on a project to generate public involvement in the transportation policy and funding decisionmaking process. The committee was informed that although there are many stakeholders in the transportation system, when it comes to people participating in the funding decisionmaking process at the legislative level, few stakeholders are involved. The purpose of the project was to educate North Dakotans, solicit input, and encourage future involvement. As part of the project, the institute held eight workshops around the state and invited approximately 4,500 stakeholders to attend. Approximately 490 people attended these workshops. The workshops had two parts--an informational part in which stakeholders were given information about the transportation system and funding and a part in which stakeholders could provide comments.

The workshop findings included:

1. Transportation infrastructure and personal mobility are critical for economic development and quality of life.
2. Demands on state and local transportation infrastructure have increased significantly.
3. Inflation has had a significant impact on the purchasing power of transportation-related appropriations.
4. The federal highway trust fund is projected to fall into deficit which would result in a revenue loss of approximately $70 million.
5. The federal per gallon tax on gasoline and diesel fuel has not increased since 1993.
6. North Dakota's transportation infrastructure is in a preservation mode and in some cases is declining in quality.
7. Funding the Department of Transportation at a level that is sufficient only to match federal funds does not provide adequate funding.
8. The life expectancy of many county bridges is 50 years and many will not be replaced for well over 100 years.
9. Approximately 6.5 percent of the state's residents live in households without vehicles and may need transit services.
10. Many local transit systems find it difficult to provide the 50 percent local operating match that is required by federal assistance programs.
11. North Dakota has an aging population and increased transit services are anticipated in the future.
12. Customers' expectations as to roadway infrastructure and transit systems are increasing.

Although there were a number of suggestions, these suggestions reoccurred throughout the workshops:

1. Eliminate diversions from the state highway tax distribution fund.
2. Make permanent the 2007-09 transfer of 10 percent of motor vehicle excise tax collections to the highway fund and dedicate additional motor vehicle excise tax revenues to the highway tax distribution fund.
3. Increase dedication of oil tax money to impacted political subdivisions.
4. Increase funding of the Department of Transportation, at a minimum, by an amount equal to the rate of construction and maintenance inflation.
5. Distribute any increases in the state highway tax distribution fund to all governmental entities with roads.
6. Finance budget increases with diversion and dedication measures and, if necessary, a fuel tax increase of up to five cents per gallon.
7. Increase funding for transit to maintain existing services and routes, to extend services to additional areas, and to expand hours of operation.
8. Require all state-supported transit services be coordinated with other services within the area.

After the workshops, approximately 80 people attended a state conference to summarize the local workshops. At the state conference, the Department of Transportation estimated that the current system, including transit, would need $553 million annually while $314 million is available. At an existing inflation rate of 15 percent, annual revenue shortfalls are projected at nearly $257 million. It was suggested that a starting point for addressing existing revenue shortfalls is the dedication of all state motor vehicle excise tax revenues for transportation purposes. It was proposed that these funds be deposited in the state highway tax distribution fund to benefit all governmental entities with roads.

The committee received testimony from the Associated General Contractors of North Dakota in support of placing motor vehicle excise tax revenues in the state highway tax distribution fund.

Department of Transportation Updates

The committee received testimony from the Department of Transportation. The major issues affecting the department included revenue, conditions of highways and bridges, transit funding and programs, and the REAL ID Act. The department also testified on other issues, including renewal notices for vehicle registration, inflation, staffing, truck permits, diesel fuel shortages, and requests for system improvements.

Revenue

The committee was informed that the state is very dependent on federal highway revenue. Historically, North Dakota has received more than $2 in federal funding for each dollar that has been contributed to the federal highway trust fund. North Dakota received a combined total of about $454 million in federal funding for the highway program in 2007. Ninety percent of the revenue supporting the federal highway trust fund comes from motor fuel taxes. During the 2007-09 biennium, about 53 percent of the department's total budget was

from federal revenue and over 80 percent of the construction program is federally funded. The committee was informed the department uses federal aid to the largest extent possible; however, many needs are unmet, especially due to inflation. The committee was informed that the 2009 federal highway trust fund will have a $4.3 billion shortfall by 2009.

The National Surface Transportation Policy and Revenue Study Commission was created to examine the existing condition and operation of the system and ensure that the transportation system serves the needs of a nation now and in the future. On January 15, 2008, the commission released a report entitled *Transportation for Tomorrow*. Some of the key recommendations in the report included:

- Significantly increasing investment in surface transportation.
- Accelerating the time between conception and delivery of major transportation projects to reduce costs.
- Retaining a strong federal role in transportation.
- Replacing over 100 current transportation programs with 10 programs that are outcome-based and focused on national interests.
- Creating a new independent National Surface Transportation Commission to act as an overseer to develop a national strategic plan for each of the program areas and to establish the costs to finance the plan.

In 2007 the Legislative Assembly provided $266.7 million to the Department of Transportation, $74.4 million to counties, and $44.3 million to cities for transportation. Unique funding provisions included:

- A one-time 10 percent motor vehicle excise tax transfer to the state highway fund.
- A $1 million transfer to the state public transportation fund.
- A reduction in the transfer to the Highway Patrol from the highway tax distribution fund.
- Changes to the 2 percent excise tax in heating fuel components which resulted in $2.4 million less to the highway tax distribution fund.

The committee was informed that the revenue package provided by the 2007 Legislative Assembly is producing the intended revenue levels. However, the state cannot depend on federal funds in the future and states will have to be more responsible for funding highway projects. An Oregon study and a Minnesota pilot project concern imposing a tax based on miles driven, rather than on gallons of fuel purchased. One problem with this system of taxation is that new vehicles are more efficient and use less fuel over the same number of miles. In addition, fuel purchases for agricultural purposes complicate the system. The North Dakota Motor Carriers Association informed the committee that an increase in the state's gas tax would have a large impact on motor carriers because the federal government may increase the federal gas tax by up to five cents per gallon.

Conditions of Highways and Bridges

The committee was informed about the highway performance classification system. The classification system focuses on the performance of the highway system and identifies desired service levels and performance standards for each of the five highway categories:

- Interstate.
- Interregional.
- State corridor.
- District corridor.
- District collector.

There has been improvement in the number of miles with ride deficiencies. In 2003 there were 5,131 roadway miles that met accepted guidelines identified in the highway performance classification system. In 2005 there were 5,621 miles that met accepted guidelines, a 9.5 percent increase in three years.

The committee was informed that a smooth pavement has less distress, lasts longer, and reduces maintenance costs. For every dollar not spent on preventive maintenance, $4 to $5 will be needed for complete reconstruction a few years later. In 2000, 57 percent of the interstate highways were rated at good or excellent compared to almost 90 percent with a good or excellent rating in 2006.

The committee received testimony on the comprehensive bridge inspection program. North Dakota has 5,026 bridges. There are 1,712 bridges on the state system, 96 bridges in cities on the urban system, and 3,218 under county or township jurisdiction. The only bridges in North Dakota which were similar to the I-35W Bridge that collapsed in Minnesota were the Four Bears Bridge and the Fairview Bridge on Highway 58, both of which have been replaced.

The committee was informed a bridge that is designated structurally deficient does not mean that the bridge is unsafe but means that the deck, superstructure, or substructure has a condition that warrants attention. There are 751 bridges in the state which are rated structurally deficient. Of these bridges, 714 are located on the county and township system.

The committee was informed that a bridge designated functionally obsolete means that a part of the bridge does not meet a design standard. The designation does not relate to the structural integrity of the bridge. There are 280 functionally obsolete bridges in the state. Of these bridges, 237 are located on the county and township system.

The committee was informed that a little over 20 percent of the bridges in the state are classified as deficient. This includes 3.9 percent of the bridges on the state system, 14.6 percent of the bridges in the urban areas, and 29.6 percent of the bridges in the county and township system.

The committee received testimony on factors affecting road and bridge quality. Oil development has a negative impact on the highway system. It is estimated that up to 400 truckloads of equipment and material are required to setup and service a vertical well site and 600 truckloads are required for a horizontal well. The increased heavy truck traffic associated with the oil

industry was unknown when roads and bridges were designed and as a result these roads and bridges were not designed with the structural capacity to handle the impact.

The committee was informed of the negative impact on the highway system of ethanol and biodiesel production. It is estimated that a 100-million-gallon ethanol plant could generate as many as 71,000 truckloads per year. The potential impact on the local road network is a major concern because the roads were not built to handle these truck volumes.

The committee was informed of the negative impact railroad abandonments have on the highway system. The loss of rail service has lead to the development of subterminal elevators which can load 100-car unit trains. These subterminal elevators change the traffic patterns and increase traffic in certain areas.

Transit Funding and Programs

The Department of Transportation oversees the public transportation program in the state. There are currently 35 public transit projects in the state. Collectively these systems operate approximately 235 buses, vans, and cars that provide more than 1.7 million rides per year.

The committee was informed that the department is consolidating the public transit programs to efficiently and effectively use limited resources to serve the rural areas and the special needs in these areas. The department is consolidating the state's 35 public transit projects into eight regions, each with a regional administrator and centralized dispatching.

The committee received testimony on the change in the formula for payments from the public transportation fund. As a result of 2007 legislative action, the base amount of $18,300 per year was changed to a formula of 4 percent of the appropriation for the program. The reason for the change from a fixed amount to a percentage was so that the statute would not need to be amended whenever the appropriation provided for an increase in the base amount. The Department of Transportation interpreted the change from a fixed base amount per year to a percentage amount as intending the base amount to be determined on a biennial basis and as a result distributed one-half of the amount--$11,400--the first year of the biennium. Committee members contended that the base amount for county public transportation funding should be determined on an annual basis--$22,800 per year.

The Attorney General issued an opinion that the base amount for the annual distribution from the public transportation fund is to be calculated on the total biennial appropriation, with the result that the base amount should be $22,800 per year. The change in the formula as a result of the Attorney General's opinion resulted in a larger amount for small transit providers.

The committee was informed that the Department of Transportation would correct the distribution in the second year of the biennium. Correcting the distribution for both years would have a negative impact on four major carriers that serve Fargo, Grand Forks, Minot, and Bismarck. For example, a fix in both years in Cass County would result in a drop from $441,000 to $242,000, whereas a one-year fix would result in a drop from $441,000 to $346,000.

Committee discussion indicated correcting the distribution in the second year of the biennium appeared to be the best solution and that approach was supported by most transit groups.

REAL ID Act

The committee received testimony on the implementation of the REAL ID Act. In January 2008 the United States Department of Homeland Security announced a final rule establishing minimum security standards for state driver's licenses and identification cards. The following table summarizes those rules:

Document Acceptance						
Action		Current Driver's License	REAL ID Compliant Driver's License	Enhanced Driver's License/ Enhanced Identification	Passport	Passport Card
	Fly within the United States	Yes, with the REAL ID extensions until March 11, 2011*	Yes	No	Yes	No
	Return from the Western Hemisphere by land/sea	Yes, with birth certificate until June 1, 2009	No	Yes	Yes	Yes
	Flying internationally	No	No	No	Yes	No
	Use to drive a vehicle	Yes	Yes	Yes	No	No
	Enter into a federal building	Yes, with REAL ID extensions until March 11, 2011*	Yes	No	Yes	No
	Needs radio frequency ID (RFID) chip	No	No	Yes	No	Yes
	Approximate cost	$10	$25 to $30	$25 to $30	$85 to $100	$45/$20

*First extension goes through December 31, 2009, and second extension goes through March 11, 2011.

Other Issues

The committee received testimony on other issues including issues with renewal notices for vehicle registration, inflation, staffing, truck permits, diesel fuel shortages, and requests for system improvements.

More than the average number of people did not receive motor vehicle registration renewal notices sent in October and November 2007. Although the Department of Transportation acknowledged that something went wrong with the renewal system, the department was unable to find the cause of the problem. The department

resent 74,000 notices at a cost of $27,000 to ensure that all registered vehicle owners were notified. Of the 74,000 vehicles that were not renewed and to which second notices were sent, 17,515 were motorcycles; 41,955 were recreational vehicles, farm trucks, or farm trailers; and approximately 14,500 were other vehicles. It was noted that motorcycles, recreational vehicles, and farm trucks and trailers may have had a delay in renewal because drivers sometimes wait to renew the registration until they drive the vehicle.

The committee was informed that the greatest challenge facing the transportation industry in the past few years is the significant increases in the cost of road and bridge construction and maintenance. North Dakota's overall construction cost index increased about 45 percent from 2001 to 2007. For example, a product with a cost of $100 in 2001 would cost $145 in 2007. Even more dramatic was the increase from 2005 to 2007 of 34 percent. Federal and state revenue sources have remained relatively stable and have not increased with the rising costs, so adjustments to the construction and maintenance program, with resultant delays of some projects, have taken place.

The Department of Transportation had 28 vacant positions. The largest need is for engineers, engineering technicians, and equipment operators. Equipment operator recruitment and retention is a concern especially in western North Dakota where there is a strong demand for truckdrivers in the oil industry. In addition, some counties offer salary ranges that exceed the department's salary range by $200 to $600 a month. The department lost two skilled engineers that received salary increases from $6,000 to $12,000 for their new positions.

The committee was informed of the fiscal effect of Senate Bill No. 2406 (2007), which allowed truckers to purchase an annual overwidth permit for $500 and House Bill No. 1295 (2007), which allowed an annual permit for $300 for trucks to travel on the Interstate highways with a 105,500-pound load with appropriate axle weights. Only two permits were issued for an annual overwidth permit for 2007. The total purchases may have been limited, however, because the permits were valid for only half of the year. In addition, truckers inquiring about the permit had loads that were overheight or overlength, in addition to being overwidth. In these instances, the overwidth permit did not serve the needs of the truckers. In 2007 there were 339 annual permits issued allowing 105,500-pound loads on the Interstate system.

To deal with potential diesel fuel shortages, the Department of Transportation entered an agreement with the National Guard in which the department is allowed to use four fuel storage tankers. The fuel storage tankers will be located at the armories in Dickinson, Minot, Grand Forks, and Valley City. If there is a diesel fuel shortage, the department will meet the fuel suppliers and truck diesel fuel in the tankers to the site experiencing the shortage. The National Guard will provide the personnel to move the tankers and pump the fuel.

Requests for system improvements include improving the Theodore Roosevelt Expressway, which is United States Highway 85 south of Williston; making United States Highway 52 a four-lane highway from Minot to Jamestown; and widening and making improvements to United States Highway 12 in the southwestern part of the state. The committee was informed that no funding is available to meet these requests.

EXEMPTION FROM FEDERAL MOTOR CARRIER SAFETY REGULATIONS STUDY

Legislative History

The study of Federal Motor Carrier Safety Regulations and exemptions for interstate and intrastate transportation in relation to this state's laws and exemptions included a review of any industry-specific applications of regulations and possible exemptions to current transportation activities within this state. Section 1 of House Bill No. 1359 prohibited the superintendent of the Highway Patrol from enforcing any requirement for rear-end protection on a rear-end dump truck or other rear unloading truck or trailer while being used for hauling agricultural and other farm products from a place of production or on a farm storage site to a place of processing or storage. Section 3 of the bill provided the prohibition was to become effective on the earlier of October 1, 2008, or on approval of this state's application for exemption from rear-end protection requirements unless the superintendent of the Highway Patrol did not complete and submit an application for exemption, then the Act was to become effective on August 1, 2007. The superintendent of the Highway Patrol completed and submitted an application for exemption on June 6, 2007. Because the application was not approved by the Federal Motor Carrier Safety Administration, the prohibition became effective on October 1, 2008.

The impetus for the exemption from rear-end protection on certain trucks and trailers in this state appears to have arisen from a similar exemption in Minnesota. Generally, a state must adopt Federal Motor Carrier Safety Regulations or lose federal funding. A state may receive a specific variance from Federal Motor Carrier Safety Regulations for intrastate commerce. Under 49 CFR 350.341(c), a state may retain those exemptions from its motor carrier safety laws and regulations that were in effect before April 1988, are still in effect, and apply to specific industries operating in intrastate commerce. It appears Minnesota has this exemption because the state had the exemption in effect before April 1, 1988.

As to rear impact guards and rear-end protection, 49 CFR 393.86 provides the provision for trailers and semitrailers and for vehicles. Trailers and semitrailers with a gross vehicle weight rating of 10,000 pounds or more which are manufactured after January 25, 1998, must be equipped with a rear impact guard in compliance with federal regulations. This requirement does not apply to pole trailers, pulpwood trailers, low-chassis vehicles, special purpose vehicles, wheels back vehicles, and trailers towed in drive-away/tow-away operations. The rule defines the requirements for width,

height, rear surface, cross-section vertical height, and certification and labeling. Each motor vehicle manufactured after December 31, 1952, with a vertical distance between the bottom edge of the body and the ground of greater than 30 inches must be equipped with a rear impact guard. This requirement does not apply to truck tractors, pole trailers, pulpwood trailers, or vehicles in drive-away/tow-away operations. The rule provides for minimum requirements for vertical distance, maximum lateral distance, width, and forward placement. The rule provides particularly that "[t]he rear impact guard(s) must be substantially constructed and attached by means of bolts, welding, or other comparable means."

State Law

North Dakota Century Code (NDCC) Chapter 39-06.2, Commercial Driver's Licenses, is intended to implement federal law. Chapter 39-06.2 implements the Federal Motor Vehicle Safety Act of 1986 and the Motor Carrier Safety Improvement Act of 1999. The purposes of these Acts are to prevent commercial motor vehicle accidents, fatalities, and injuries by, among other things, strengthening commercial driver's licenses and testing standards.

Under NDCC Section 39-21-46, the superintendent of the Highway Patrol must adopt rules duplicate to or consistent with current Federal Motor Carrier Safety Regulations of the Department of Transportation relating to the safe operation of motor vehicles and motor carrier audits or inspections.

Under North Dakota Administrative Code Section 38-04-01-02, the superintendent of the Highway Patrol has adopted the following parts of the Federal Motor Carrier Safety Regulations by reference:

1. Part 382 - Controlled Substances and Alcohol Use and Testing.
2. Part 387 - Minimum Levels of Financial Responsibility for Motor Carriers.
3. Part 390 - General.
4. Part 391 - Qualifications of Drivers and Longer Combination Vehicle (LCV) Driver Instructors.
5. Part 392 - Driving of Motor Vehicles.
6. Part 393 - Parts and Accessories Necessary for Safe Operation.
7. Part 395 - Hours of Service of Drivers.
8. Part 396 - Inspection, Repair, and Maintenance.
9. Part 397 - Transportation of Hazardous Materials; Driving and Parking Rules.

2007 Legislation

In 2007 the Legislative Assembly adopted three bills directly relating to exemptions from Federal Motor Carrier Safety Regulations--House Bill Nos. 1068, 1359, and 1400.

House Bill No. 1068 exempted vehicles driven for military purposes from commercial driver's license requirements subject to federal regulations. In addition, the bill limited the waiver for a person driving a commercial vehicle for a political subdivision during an emergency to a political subdivision with a population of fewer than 3,000 and when necessary licensed drivers are not available.

House Bill No. 1359 provided for this study and the exception from enforcement for trucks and trailers without rear-end protection.

House Bill No. 1400 included trees within the waiver from a commercial driver's license for farm-to-market operations by farmers to transport agricultural products to or from a farm and allows a waiver of knowledge and skills test for a commercial driver's license for retailers and suppliers of trees.

Federal Exemptions in General

This state receives approximately $2.5 million per biennium for the Commercial Motor Carrier Safety Assistance Program. This money is used to fund the Highway Patrol. Under 49 CFR 350.331 and 350.335, the state must review its laws and regulations for compatibility with the Federal Motor Carrier Safety Regulations. Incompatibility results in loss of eligibility for the basic program funds or incentive funds under the Commercial Motor Carrier Safety Assistance Program. Under 49 CFR 350.333, the guidelines for review of state law and regulation compatibility require that if the law is not exactly the same and is less stringent than the federal regulation, then the law or regulation is not compatible. However, under 49 CFR 350.341, specific variances are allowed for intrastate commerce for vehicles less than 26,001 pounds unless the vehicle is used to transport hazardous materials or 16 or more people. Exemptions may not be based on the type of transportation being performed or the distance the driver operates from a work-reporting location unless specific exemptions are otherwise provided. However, a state may retain those exemptions from its motor carrier safety laws and regulations which were in effect before April 1988, are still in effect, and apply to specific industries operating in intrastate commerce.

Under 49 CFR 350.343, the Federal Motor Carrier Safety Administration strongly discourages exemptions for specific industries but will consider state requests with supporting information for the following 10 factors:

1. Type and scope of the industry exemption requested.
2. Type and scope of the requirement to which the exemption would apply.
3. Safety performance of that specific industry.
4. Inspection information.
5. Other commercial motor vehicle safety regulations enforced by other state agencies.
6. Commodity transported.
7. Similar variations granted in circumstances under which they were granted.
8. Justification for the exemption.
9. Effects on safety.
10. State economic environment and its ability to compete in other markets.

Under 49 CFR 350.345, a state may apply for variances from Federal Motor Carrier Safety Regulations for intrastate commerce and those variances will be granted only if the state satisfactorily demonstrates the state law, regulation, or enforcement practice achieves

substantially the same purpose as the federal regulation, does not apply to interstate commerce, and is not likely to have an adverse effect on safety.

Under 49 CFR 381, waivers of up to three months and exemptions of up to two years may be obtained for regulatory relief from one or more Federal Motor Carrier Safety Regulations. When applying for the waiver or exemption, an explanation of the safety impact and how safety would be maintained is required.

Specific Exemptions

There are four specific types of exemptions from Federal Motor Carrier Safety Regulations:

1. Medical qualifications.
2. Hours of service.
3. Knowledge and skills testing.
4. Commercial licensure.

Medical Qualifications

North Dakota Century Code Section 39-08-21 grandfathered otherwise medically unqualified drivers through a state medical waiver program so as to allow them to drive intrastate. This is allowed under 49 CFR 391.61 through 391.69. Under these sections, certain drivers are exempt from medical qualifications if they were driving before the federal regulations took effect. Generally, all commercial drivers must meet federal commercial medical requirements to be physically qualified to drive commercial vehicles. For continued medical qualification, a driver must be medically examined by a licensed health care provider every 24 months. This includes drivers of vehicles with a gross vehicle weight rating greater than 10,000 pounds that are used in interstate commerce and vehicles with a gross vehicle weight rating greater than 10,000 pounds used in intrastate commerce if used to transport hazardous materials requiring a plaque guard or designed to transport 16 or more passengers. Some of the medical conditions that may disqualify an individual from obtaining a commercial license are:

1. Heart ailment.
2. Hearing impairment.
3. Less than 20/40 acuity in either eye.
4. Insulin-dependent diabetes.
5. Epilepsy.
6. Loss or impairment of a limb.

Hours of Service

Under NDCC Section 39-32-02, certain intrastate drivers are not subject to hours-of-service limitations. These include drivers of authorized emergency vehicles, of vehicles with a gross vehicle weight rating equal to or less than 26,000 pounds, and of tow trucks operating at the request of a law enforcement officer. In addition, hours-of-service limitations do not apply to intrastate drivers during a declared emergency. This section also contains an exemption from maintaining a logbook for an intrastate driver within 150 area miles from the driver's normal work area if the driver returns to the work area and is released within 12 consecutive hours and if the driver has at least 8 consecutive hours off separating each 12 hours of duty.

Under this section, on June 29, 2007, the Governor issued an executive order declaring an emergency for drivers of commercial motor vehicles while transporting fuels to customers. This executive order has been extended a number of times, at least through September 9, 2007.

Under 49 CFR 395, specific exemptions for hours of service of drivers are provided by federal regulation. These exemptions relate to emergency conditions, salespersons, oilfield operations, short-haul operations, and retail store deliveries.

Knowledge and Skills Testing

Under NDCC Section 39-06.2-06(5), the knowledge and skills test for a commercial driver's license may be waived and a restricted license issued to employees of agrichemical businesses, custom harvesters, farm retail outlet and suppliers (including retailers and suppliers of trees), and livestock feeders.

Under 49 CFR 383.3, a state may waive the required knowledge and skills test for a commercial driver's license for employees of these designated farm-related service industries:

1. Agrichemical business;
2. Custom harvesters;
3. Farm retail outlets and suppliers; and
4. Livestock feeders.

Commercial Licensure

If one begins with the axiom that anyone driving a vehicle for a commercial purpose must have a commercial driver's license, this state has a number of exemptions to having a commercial driver's license. These exemptions manifest themselves as vehicles that may be operated by a person with a Class D license. Under NDCC Section 39-06-14, a driver with a Class D license may operate any single vehicle with a gross vehicle weight rating of 26,000 pounds or less or any such vehicle towing a trailer with a gross vehicle weight rating not in excess of 10,000 pounds; a farm tractor towing another vehicle having a gross weight in excess of 10,000 pounds; and a truck towing a trailer when the gross weight of the trailer not including the weight of the towing vehicle does not exceed 16,000 pounds. In addition, under Section 39-06-14, a Class A, B, or C license may not be issued to a person under 18 years of age except if specifically restricted to use for custom harvest purposes and the person is at least 16 years of age and satisfactorily completes appropriate examinations.

Under NDCC Section 39-06.2-06(1), a person does not need a commercial driver's license and may use a Class D license if:

1. The vehicle being driven is a house car or a vehicle towing a travel trailer used for personal purposes;
2. The vehicle is emergency or firefighting equipment necessary for the preservation of life or property; or
3. The vehicle is being used for military purposes.

North Dakota Century Code Section 39-06.2-06(3) provides for a waiver from a commercial driver's license

for farm-to-market operations by farmers. The waiver is limited to operators of a farm vehicle that is:

1. Controlled and operated by a farmer;
2. Used to transport agricultural products (including trees), farm machines, and farm supplies to and from a farm;
3. Not used in the operations of a common or contract carrier; and
4. Used within 150 miles of the farmer's farm.

Under NDCC Section 39-06.2-06(4), commercial driver's license requirements are waived for an individual operating a vehicle for a political subdivision with a population of less than 3,000 people during an emergency for the removal of snow and ice if regularly employed drivers are not available.

Under 49 CFR 383.3, a state must exempt from commercial driver's license standards individuals who operate commercial motor vehicles for military purposes. In addition, a state may exempt operators of a farm vehicle, firefighters, or a driver employed by a local government removing snow or ice if there is an emergency.

The waiver in NDCC Section 39-06.2-06, combined with Section 39-06-14, results in the following exemptions:

- A driver who is 14 or 15 years of age may operate a farm motor vehicle within 150 miles of the driver's farm, having a gross vehicle weight of not more than 50,000 pounds, when transporting agricultural products or farm supplies.
- A farmer may operate any two-axle, tandem-axle, or truck tractor farm vehicle transporting agricultural products, farm machines, or farm supplies to a farm within 150 miles of that farmer's farm. A farm vehicle may tow a trailer, semitrailer, or farm trailer, except double or triple trailers, and if the operator is under 18 years of age, a truck tractor.
- A farmer may operate a farm vehicle transporting hazardous material within 150 miles of the farm without a hazardous material endorsement.

Testimony and Discussion

The committee received testimony on the study of Federal Motor Carrier Safety Regulations and exemptions for interstate and intrastate transportation. In particular, the committee focused on the application submitted by the superintendent of the Highway Patrol for exemption from rear-end protection requirements for rear-end dump trucks or other rear unloading trucks or trailers being used to haul agricultural and other farm products. The committee was informed that the superintendent met with the director of the Federal Motor Carrier Safety Administration and the local Federal Motor Carrier Safety Administration officials in an effort to receive approval on the petition.

In March 2008 the superintendent received a letter from the Federal Motor Carrier Safety Administration not granting this state's request for an exemption. The letter stated "granting the exemption could be inconsistent with the safety goals enacted by Congress when the commercial Motor Carrier Safety Assistance Program (MCSAP) was established. Additionally, an October 2007 study by the North Dakota State University Upper Great Plains Transportation Institute found, 'the analysis here shows that the rear-guard safety equipment has injury severity benefits that far outweigh equipment costs.' Therefore, I cannot grant your request."

The committee received information on the Upper Great Plains Transportation Institute report entitled *Underride: Do Rear Impact Guards Help?*. The study was requested by the Highway Patrol. The study concluded given a 10 percent reduction in injury severity attributed to the rear guard devices on agricultural trucks, in the relevant crash population, the benefit is estimated to be $14.4 million over the seven-year depreciable life of a truck. The total equipment and maintenance cost for the North Dakota agricultural truck fleet is estimated to be $8.1 million. An estimated safety benefit of $1.76 is generated from each dollar spent on rear guards for North Dakota's agricultural truck fleet.

The study looked at national data and North Dakota crash data. The North Dakota crash data, however, could not separate instances when a car hit a truck or a truck hit a car. At first the study assumed the breakdown of 50/50 but national statistics indicate it is less likely that a car will hit a truck. Committee members expressed disappointment with the study because of the extent the study assumptions were based on speculation; the questionable use of national statistics due to this state's mainly rural highways; and the fact that the study did not consider miles on the road when commercial trucks have many more times the miles on road than farm trucks that are driven a few times a year. The finding of .2 fatalities per year under the study, however, is consistent with anecdotal evidence from the Highway Patrol. The committee was informed that regardless of the study the Federal Motor Carrier Safety Administration was influenced greatly in not granting the exemption due to a death near Devils Lake.

The committee was informed that a farmer may build whatever bumper the farmer wants on a straight truck because straight farm trucks do not need a certified bumper. A bumper is only needed if the back tires are more than two feet from the rear of the vehicle. For other trucks, the retrofit will cost between $800 and $1,200 based on testimony received during the 2007 legislative session. In addition, the Highway Patrol has begun an education effort to inform farmers of the rear-end protection requirement.

The committee was informed that because the exemption was not granted, this state is ineligible to receive any MCSAP basic and incentive grant funds as of October 1, 2008. In addition, if the Legislative Assembly repeals NDCC Section 39-21-55 and federal funding is not retroactive, the Highway Patrol will need a deficiency appropriation of $488,000. The committee was informed that if Section 39-21-55 is not repealed, this state will not have access to a national database and will have to have its own safety program, which would create problems for interstate truckers. In addition, every truck from North Dakota going into another state would receive the "white glove" treatment.

RAILROAD RISK ASSESSMENTS, HAZARDOUS CARGO, AND RESPONSES TO EMERGENCIES

Legislative History

Senate Bill No. 2188, as introduced, was based upon a California law known as the Local Community Rail Security Act of 2006. The legislative history for Senate Bill No. 2188 revealed concern about getting information from railroads after cargo spills.

Opponents of the bill informed the committee that California is involved in litigation over the law because, among other things, the California law is preempted by federal law. There was testimony that the railroads have been cooperating with federal agencies in addressing the issues contained in Senate Bill No. 2188, and the proposal would be counterproductive to those efforts and conflict with them in some key areas. One of the main concerns was secrecy of information--the greater the number of people with information, the greater risks to security. As such, it was argued that there is a need for a nationwide, uniform approach, and this approach should be from rules adopted by the Transportation Security Administration, which is part of the Department of Homeland Security, and the Pipeline and Hazardous Safety Administration and Federal Railroad Administration, which are part of the United States Department of Transportation.

Proponents of the bill informed the committee that there is no specific requirement for railroads to report derailments to any state or local official. There was testimony that railroads do not cooperate with state and local emergency responders and the information relating to spilled materials during a derailment has been provided only after too much time has passed and with too much resistance. There was testimony that employees want more training.

Related Federal Regulation

Under 49 U.S.C. 5107, the United States Secretary of Transportation is required to make rules requiring training hazmat employers are to give hazmat employees on the safe loading, unloading, handling, storing, and transportation of hazardous materials and emergency preparedness for responding to an accident or incident involving the transportation of hazardous materials. Under 49 U.S.C. 5110, if there is an incident involving hazardous material being transported in commerce, the person transporting the material must disclose to appropriate emergency response authorities, immediately on request, information about the material.

Under 49 U.S.C. 5125, if it is not possible to comply with a state or local government requirement and a federal requirement, or the state or local requirement is an obstacle to accomplishing the federal requirement, the state or local requirement is preempted. In addition, the state or local regulation would be preempted if the regulation were not substantially the same as the federal regulation in any of the following areas:

1. The designation, description, and classification of hazardous materials.
2. The packing, repacking, handling, labeling, marking, and placarding of hazardous materials.
3. The preparation, execution, and use of shipping documents.
4. The written notification, recording, and reporting of unintentional release in transportation of hazardous material.
5. The design, manufacturing, fabricating, marking, maintenance, reconditioning, repairing, or testing of packaging for a container sold as qualified for use in transporting hazardous material.

As a result of these statutes, under 49 CFR 172 et seq., emergency response information regarding hazardous material must be on the train and must be made available immediately to federal, state, or local responders. That information must include an emergency response telephone number that must be answered at any time. In addition, railroads are required to have a security plan dealing with personal security, unauthorized access, and enroute security of shipments. The plan must be in writing and updated as circumstances change.

In addition to rules on hazardous materials, the Federal Railroad Administration has adopted rules relating to all railroads. Under 49 CFR 22.13, employees of a railroad are required to report immediately, by the quickest means available, derailments, collisions, storms, washouts, fires, obstructions to tracks, and hazardous conditions. Under 49 CFR 225.9, each railroad must report immediately to the National Response Center any accident or incident arising from the operation of a railroad. The railroad must have an internal control plan to ensure complete and accurate reporting of all accidents, incidents, injuries, and occupational illnesses arising from the operation of a railroad. The railroad must disseminate the plan to the employees and must provide whistleblower protection to any person subject to the plan.

Under 49 CFR 840.3, the operator of a railroad must notify the National Transportation Safety Board at the earliest practical time after the occurrence of certain railroad accidents. The notification must be within two hours, if among other things, the accident resulted in damage to a tank car or container resulting in the release of hazardous materials or involving evacuation of the general public or if there was a fatality at a grade crossing. The notification must occur within four hours after the accident if there was damage of $150,000 or more and the accident did not involve a passenger train.

Recent Changes in Federal Law

On August 3, 2007, President George W. Bush signed the "Implementing Recommendations of the 9/11 Commission Act of 2007." The legislation includes significant rail security measures that originally had been introduced in "The Rail and Public Transportation Security Act of 2007."

Some sections of the Act that closely relate to railroads are listed below, and the sections that relate closely to the study of the committee are in bold:

- **Section 1511. Railroad transportation security risk assessment and national strategy.**
- **Section 1512. Railroad carrier assessments and plans.**
- Section 1513. Railroad security assistance.
- Section 1514. Systemwide Amtrak security upgrades.
- Section 1515. Fire and life safety improvements.
- **Section 1516. Railroad carrier exercises.**
- **Section 1517. Railroad security training program.**
- Section 1518. Railroad security research and development.
- Section 1519. Railroad tank car security testing.
- Section 1520. Railroad threat assessments.
- **Section 1521. Railroad employee protections.**
- Section 1522. Security background checks of covered individuals.
- Section 1523. Northern border railroad passenger report.
- Section 1524. International Railroad Security Program.
- Section 1525. Transmission line report.
- Section 1526. Railroad security enhancements.
- Section 1528. Railroad preemption clarification.

Under Section 1511, the Secretary of Homeland Security is required to establish a task force to complete a nationwide risk assessment of a terrorist attack on railroad carriers by February 2008. The assessment must include a methodology, identification and evaluation of critical assets and infrastructure, identification of risks to those assets and infrastructure, identification of risks to passengers and cargo, an assessment of employee training, and an assessment of private and public actions and integration of those actions. By May 2008 the Secretary of Homeland Security must develop and implement the "National Strategy for Railroad Transportation Security." The plan must prioritize actions to:

1. Improve the security of railroad infrastructure.
2. Deploy equipment and personnel to detect security threats.
3. Train railroad employees in terrorism prevention, preparedness, and response activities.
4. Conduct public outreach campaigns for railroads.
5. Provide additional security.
6. Ensure the continued movement of freight and passengers in the event of an attack.
7. Coordinate existing and planned railroad security initiatives undertaken by the public and private sectors.
8. Assess the usefulness of covert testing of railroad security systems.
9. Assess the ability to integrate security into infrastructure design.
10. Assess the implementation of random searches.

The plan must include the roles of all levels of government and stakeholders. The United States Secretary of Homeland Security must consult with all stakeholders in making the plan.

Under Section 1512, by August 2008 the United States Secretary of Homeland Security must make rules requiring railroads assigned to a high-risk tier to conduct vulnerability assessments and submit a security plan. The vulnerability assessments require the identification and evaluation of critical railroad carrier assets and infrastructure, the identification of the vulnerabilities to those assets and infrastructure, the identification of strengths and weaknesses, and the identification of redundant and backup systems. The security plan must include the identification of a security coordinator; a list of capital and operational improvements; procedures to be implemented or used by the railroad in response to a terrorist attack; identification of steps taken with state and local law enforcement agencies, emergency responders, and federal officials to coordinate in response to a terrorist attack; a strategy and timeline for training; enhanced security measures for heightened security risks; plans for redundant and backup systems; and a strategy for implementing enhanced security for security-sensitive materials.

Under Section 1516, the Secretary of Homeland Security is required to establish a program for conducting security exercises for railroad carriers and entities to be assessed under the program, including state and local agencies.

Under Section 1517, by February 2008 the Secretary of Homeland Security must develop and issue rules for a training program to prepare railroad employees for potential security threats and conditions. The training must include best practices and must include understanding security incident procedures, including procedures for communication with governmental and nongovernmental emergency response providers and for onsite interaction with these providers.

Under Section 1521, there is whistleblower protection for employees and contractors that:

1. Provide information to assist in any investigation regarding any conduct which the employee reasonably believes to constitute a violation of federal law.
2. Refuse to violate any law.
3. File a complaint applicable to railroad safety or security.
4. Notify the railroad carrier or Secretary of Homeland Security of a work-related injury or illness.
5. Cooperate with a safety or security investigation.
6. Furnish information to any government agency as to the facts relating to any accident or incident resulting in injury or death or damage to property occurring in connection with railroad transportation.

Testimony and Discussion

The committee received testimony on the study of railroad risk assessments, hazardous cargo, and responses to emergencies. The committee was informed that after Senate Bill No. 2188, which required the study, was enacted, the President signed the "Implementing Recommendations of the 9/11 Commission Act of 2007." As described under

Recent Changes in Federal Law, the federal Act provided for railroad risk assessment, training of railroad personnel, and whistleblower protection. Because the federal Act addressed the same issues of the study, the committee was informed the only issue that remained for the committee was to monitor the development of federal rules under the law.

The committee was informed that state law requires all railroad carriers to notify the Department of Emergency Services of any accident. In addition, 59 separate jurisdictions in the state have been rewriting evacuation and shelter plans for approval by the Department of Emergency Services.

HIGHWAY CONSTRUCTION POSITIONS REPORT

The report required by Section 4 of House Bill No. 1012 informed the committee that there were no additional full-time equivalent positions hired for highway construction and maintenance in lieu of entering into contracts for those purposes.

TRIBAL AND STATE RELATIONS COMMITTEE

North Dakota Century Code (NDCC) Section 54-35-23 establishes the Tribal and State Relations Committee. The committee is composed of the Legislative Council chairman or the chairman's designee; three members of the House of Representatives, two of whom must be selected by the leader representing the majority faction of the House of Representatives and one of whom must be selected by the leader representing the minority faction of the House of Representatives; and three members of the Senate, two of whom must be selected by the leader representing the majority faction of the Senate and one of whom must be selected by the leader representing the minority faction of the Senate. The Legislative Council chairman, or the chairman's designee, serves as chairman of the committee.

North Dakota Century Code Section 54-35-23 directs the committee to conduct joint meetings with the Native American Tribal Citizens' Task Force to study tribal-state issues, including government-to-government relations, the delivery of services, case management services, child support enforcement, and issues related to the promotion of economic development. After the joint meetings have concluded, the committee is to meet to prepare a report on its findings and recommendations, together with any legislation required to implement those recommendations, to the Legislative Council. The Native American Tribal Citizens' Task Force is composed of six members, including the executive director of the Indian Affairs Commission, or the executive director's designee; the chairman of the Standing Rock Sioux Tribe, or the chairman's designee; the chairman of the Spirit Lake Nation, or the chairman's designee; the chairman of the Three Affiliated Tribes - Mandan, Hidatsa, and Arikara Nation, or the chairman's designee; the chairman of the Turtle Mountain Band of Chippewa Indians, or the chairman's designee; and the chairman of the Sisseton-Wahpeton Oyate, or the chairman's designee.

Senate Bill No. 2402 (2007) extended the expiration date of the committee from July 31, 2007, to July 31, 2009. The bill also provided that if the executive director of the Indian Affairs Commission or any of the tribal chairmen appoint a designee to serve on the task force, only one individual may serve as that designee during the biennium. A substitute designee may be appointed by the executive director of the Indian Affairs Commission or a tribal chairman in the event of the death, incapacity, resignation, or refusal to serve of the initial designee.

In addition to the committee's statutory responsibilities, the Legislative Council assigned to the committee responsibility under NDCC Section 57-51.2-05 to receive a report from the Governor describing the negotiations and terms of any agreement between the Governor and the Three Affiliated Tribes - Mandan, Hidatsa, and Arikara Nation relating to taxation and regulation of oil and gas exploration and production within the boundaries of the Fort Berthold Reservation; and thereafter receive biennial reports describing the agreement's implementation and any difficulties in its implementation.

Committee members were Representatives Merle Boucher (Chairman), Duane L. DeKrey, and Daryl Lies and Senators Stanley W. Lyson, Tim Mathern, and Dave Oehlke. Representative Dawn Marie Charging was a member of the committee until her resignation and replacement by Representative Daryl Lies.

Members of the Native American Tribal Citizens' Task Force were David Brien, Chairman, Turtle Mountain Band of Chippewa Indians; Ron His Horse Is Thunder, Chairman, Standing Rock Sioux Tribe; Cheryl Kulas, Executive Director, Indian Affairs Commission; Myra Pearson, Chairman, Spirit Lake Nation; Michael Selvage, Sr., Chairman, Sisseton-Wahpeton Oyate; and Marcus Wells, Jr., Chairman, Three Affiliated Tribes - Mandan, Hidatsa, and Arikara Nation. Chairman His Horse Is Thunder appointed Avis Little Eagle, Vice Chairman, Standing Rock Sioux Tribe, as his designee to serve on the task force.

The committee submitted this report to the Legislative Council at the biennial meeting of the Council in November 2008. The Council accepted the report for submission to the 61st Legislative Assembly.

FEDERAL INDIAN LAW AND POLICY

Indian law is a very complex area of law. Due to the sovereign character of Indian tribes, most Indian law is necessarily federal in nature. Under the federal system, there have been several distinct eras of federal-tribal relations.

During the initial era of federal-tribal relations, 1789 to approximately 1820, known as the nonintercourse era, the federal government sought to minimize friction between non-Indians and Indians by limiting the contacts between these groups. This era was followed by the Indian removal era, approximately 1820 to 1850, when the federal government sought to limit friction between non-Indians and Indians by removing all Indians from east of the Mississippi River to open land in the Oklahoma Territory. This era was followed by what may be called the reservation era, 1850 to 1887, when, as non-Indians continued to move westward and friction developed between non-Indians and Indians, the federal government developed a policy of restricting Indian tribes to specified reservations. This policy was implemented by treaty in which each tribe ceded much of the land it occupied to the United States and reserved a smaller portion to itself. This is the origin of the term reservation.

With the enactment of the General Allotment Act of 1887, or Dawes Act, United States-Indian relations entered a new era. This era is known as the allotment era because the General Allotment Act authorized the President to allot portions of reservation land to individual Indians. Under this system, allotments of 160 acres were made to each head of a family and 80 acres to others, with double those amounts to be

allotted if the land was suitable only for grazing. Title to the allotted land was to remain in the United States in trust for 25 years, after which it was to be conveyed to the Indian allottee free of all encumbrances. The General Allotment Act also authorized the Secretary of the Interior to negotiate with tribes for the disposition of all excess lands remaining after allotment for the purpose of non-Indian settlement. The General Allotment Act resulted in a decline in the total amount of Indian-held land from 138 million acres in 1887 to 48 million acres in 1934.

The allotment era was followed by the Indian reorganization era, 1934 to 1953, during which the land base of the tribes was protected by extending indefinitely the trust period for existing allotments still held in trust and encouraging tribes to establish legal structures for self-government. The Indian reorganization era was followed by the termination and relocation era, 1953 to 1968, when the federal government sought to terminate tribes that were believed to be prosperous enough to become part of the American mainstream, terminate the trust responsibility of the federal government, and encourage the physical relocation of Indians from reservations to seek work in large urban centers.

The policy of termination and relocation was regarded as a failure and the modern tribal self-determination era began with the Indian Civil Rights Act of 1968. The effect of this Act was to impose upon the tribes most of the requirements of the Bill of Rights. The Indian Civil Rights Act of 1968 also amended Public Law 280 so that states could no longer assume civil and criminal jurisdiction over Indian country unless the affected tribes consented at special elections called for this purpose. There have been a number of federal Acts since 1968 designed to enhance tribal self-determination. These include the Indian Financing Act of 1974, which established a revolving loan fund to aid in the development of Indian resources; the Indian Self-Determination and Education Assistance Act of 1975, which authorized the Secretaries of the Interior and of Health, Education, and Welfare to enter contracts under which the tribes would assume responsibility for the administration of federal Indian programs; the Indian Tribal Government Tax Status Act of 1982, which accorded the tribes many of the federal tax advantages enjoyed by states, including that of issuing tax-exempt bonds to finance governmental projects; the Tribally Controlled Schools Act of 1988, which provided grants for tribes to operate their own tribal schools; the Indian Child Welfare Act of 1978; the American Indian Religious Freedom Act of 1978; and the Indian Gaming Regulatory Act of 1988.

STATE-TRIBAL RELATIONS

Probably the most important concept in state-tribal relations is the concept of sovereignty. Both the states and Indian tribes are sovereigns in the federal system. In *Johnson v. McIntosh*, 21 U.S. 543 (1823), the United States Supreme Court stated "[T]he rights of the original inhabitants were, in no instance, entirely disregarded; but were necessarily, to a considerable extent, impaired. They were admitted to be the rightful occupants of the soil . . . but their rights to complete sovereignty, as independent nations, were necessarily diminished, and their power to dispose of the soil at their own will, to whomsoever they pleased, was denied by the original fundamental principle, that discovery gave exclusive title to those who made it." In *Cherokee Nation v. Georgia*, 30 U.S. 1 (1831), the Supreme Court held that the Cherokees could not be regarded as a foreign state within the meaning of Article III of the Constitution, so as to bring them within the federal judicial power and permit them to maintain an action in the Supreme Court. However, Chief Justice John Marshall characterized Indian tribes as "domestic dependent nations." In *Worcester v. Georgia*, 31 U.S. 515 (1832), the Supreme Court further discussed the status of Indian tribes. The Court stated that "[t]he Indian nations had always been considered as distinct, independent political communities, retaining their original natural rights, as the undisputed possessors of the soil, from time immemorial, with the single exception of that imposed by irresistible power, which excluded them from intercourse with any other European potentate than the first discoverer of the coast of the particular region claimed . . . ." The Court concluded that the laws of Georgia have no force in Cherokee territory. Based upon these early cases, the tribes are sovereign and free from state intrusion on their sovereignty. Thus, state laws generally have been held inapplicable within the boundaries of reservations, although exceptions have been made under the plenary power of Congress to limit tribal sovereignty.

STATE-TRIBAL COOPERATIVE AGREEMENTS

North Dakota Century Code Chapter 54-40.2 provides for agreements between public agencies and tribal governments. As used in this chapter, public agency means any political subdivision, including a municipality, county, school district, 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. The term does not include an entity owned, organized, or chartered by a tribe that exists as a separate entity authorized by a tribe to enter agreements of any kind without further approval by the government of the tribe.

North Dakota Century Code 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 are 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. The agreement must set forth fully the powers, rights, obligations, and responsibilities of the parties to the agreement. Section 54-40.2-03.1 provides that after the parties to an agreement have agreed to its contents, the public 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 also must be published in any newspaper of general circulation for the benefit of any members of the tribe affected by the agreement. The notice also must 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 state that the public 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.

North Dakota Century Code Section 54-40.2-03.2 provides that if the public agency involved receives a request pursuant to Section 54-40.2-03.1, the public 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 also must be published in a newspaper of general circulation published for the benefit of the members of any tribe affected by the agreement. The notice also must 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.

North Dakota Century Code 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 so provides, it may be submitted to the Secretary of the Interior for approval.

North Dakota Century Code 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 before commencement of its performance, the agreement must be filed with the Secretary of the Interior, the clerk of court of each county where the principal office of one of the parties is located, the Secretary of State, and the affected tribal government.

North Dakota Century Code 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 must make findings concerning the utility and effectiveness of the agreement taking into account the original intent of the parties and may make findings as to whether the parties are in substantial compliance with all provisions of the agreement. In making its findings, the commission must 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 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 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.

North Dakota Century Code 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; nor 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.

2007 LEGISLATION

The 60th Legislative Assembly enacted several bills relating to Indian issues. House Bill No. 1098 (2007) reduced the number of at-large members of the Indian Affairs Commission appointed by the Governor from four to three and reduced from three to two the at-large members who must be of Indian descent and must be enrolled members of a tribe. The bill also added as a member of the commission the chairman or the chairman's designee of the Sisseton-Wahpeton Oyate of the Lake Traverse Reservation.

House Bill No. 1092 (2007) made changes to the Uniform Juvenile Court Act. The bill addressed the federal Indian Child Welfare Act requirement that "active efforts" to preserve the Indian family be shown before a court may place an Indian child in foster care or terminate parental rights with respect to an Indian child.

House Bill No. 1137 (2007) repealed provisions in NDCC Chapter 54-34.3 which related to the establishment of an international business and trade office, a North Dakota American Indian Business Development Office, and a North Dakota women's

business development office and reenacted similar provisions in Chapter 54-60, relating to the Department of Commerce.

House Bill No. 1393 (2007) provided an individual income tax exemption for income of a taxpayer from activities or sources within the boundaries of any Indian reservation in this state if the taxpayer resides within the boundaries of any reservation in this state and is an enrolled member of a federally recognized Indian tribe. The bill also provided sales and motor vehicle excise tax exemptions for tribal members.

House Bill No. 1012 (2007) eliminated the requirement of residency within the boundaries of a reservation in this state for a tribal member to qualify for the motor vehicle excise tax exemption as created by House Bill No. 1393. The Governor vetoed the provision of House Bill No. 1012, which would have eliminated the requirement of residency within the boundaries of a reservation in this state for a tribal member to qualify for the motor vehicle excise tax exemption created by House Bill No. 1393.

House Bill No. 1395 (2007) appropriated $700,000 from the oil and gas trust fund to the State Board of Higher Education for the purpose of providing grant assistance payments to tribally controlled community colleges. The bill also provided that the first $700,000 of the state's share of tax revenues from oil produced from wells within the exterior boundaries of the Fort Berthold Reservation must be transferred to the permanent oil tax trust fund.

House Bill No. 1503 (2007) extended the effective date of the tribal-state guaranty program from June 30, 2007, to July 31, 2011.

House Bill No. 1504 (2007) provided that a tribal police officer of a federally recognized Indian tribe in this state who meets the requirements of the Peace Officer Standards and Training Board is eligible for a peace officer license or a part-time peace officer license. The bill provided that a tribal officer who is a member of a police force of a tribal government and who is licensed by the board may exercise the powers of a peace officer of this state within the exterior boundaries of the reservation or off the reservation in accordance with the terms and conditions of the special deputy appointment, the employment agreement, or the agreement between the state or political subdivision and the tribe.

House Bill No. 1513 (2007) authorized the State Water Commission to establish an emergency municipal, tribal, and rural water assistance program for municipalities, tribes, and rural water systems, whose primary source of water is the Missouri River, Lake Sakakawea, or Lake Oahe. The purpose of the program is to provide emergency grant funds to municipalities, tribes, and rural water systems facing a critical need or health risk as a result of the inability of the water intake system for the municipal, tribal, or rural water system to supply an adequate quantity of quality water to the people served by the municipal, tribal, or rural water system.

Senate Bill No. 2419 (2007) authorized the Governor to enter agreements with the Three Affiliated Tribes - Mandan, Hidatsa, and Arikara Nation relating to taxation and regulation of oil and gas exploration and production within the boundaries of the Fort Berthold Reservation. The state oil and gas gross production tax must apply to all wells within the Fort Berthold Reservation and the state oil extraction tax for trust lands on the Fort Berthold Reservation may not exceed a 6.5 percent rate but may be reduced through negotiation of the agreement. All revenues and exemptions from all oil and gas gross production and oil extraction taxes attributable to production from trust lands on the Fort Berthold Reservation must be divided evenly between the tribe and the state. For production from nontrust lands on the Fort Berthold Reservation, the tribe must receive 20 percent of total oil and gas gross production tax collections in lieu of application of the Three Affiliated Tribes - Mandan, Hidatsa, and Arikara Nation's fees and taxes related to production on such lands. The state's share of revenue under the agreement is subject to allocation among political subdivisions within the boundaries of the reservation. The bill is ineffective after June 30, 2009, unless by that date the Governor's office notifies the Tax Commissioner and Legislative Council that an agreement has been entered with the Three Affiliated Tribes - Mandan, Hidatsa, and Arikara Nation.

ECONOMIC DEVELOPMENT INITIATIVES IN INDIAN COUNTRY

The committee received reports from the director of the North Dakota American Indian Business Development Office of the Department of Commerce. The director reported that two procurement assistance centers were consolidated in July 2007 and there are now procurement assistance centers in Bismarck, Belcourt, Dickinson, Fargo, Fort Yates, and New Town.

The director reported that the North Dakota American Indian Business Development Office contracts with the small business development centers located on the state's reservations. The committee learned that 184 companies have registered for services since May 2006. Of this total 101 are Native American-owned. This represents 90 percent of the current 8(a)/SDB certified companies in North Dakota and 70 percent of the companies registered at *www.CCR.gov* as owned by Native Americans. The North Dakota American Indian Business Development Office has facilitated the awarding of 60 contracts worth $84.4 million, $60.1 million of which were obtained by American Indian firms. The committee learned that one issue affecting American Indian-owned firms in North Dakota is the effort by the Department of Defense to consolidate procurement for the Minot and Grand Forks Air Force Bases at Scott Air Force Base near St. Louis, Missouri.

The committee reviewed the implementation of the tribal-state loan guaranty program. Representatives of the Bank of North Dakota reported that the program is designed to authorize the Bank of North Dakota to provide a guaranty for a non-American Indian that is doing business with an American Indian-owned or tribally owned business. If there is a contract or payment dispute between the two parties, the Bank would satisfy the obligation and pursue litigation after the payment is made. Representatives of the Bank reported

that the Bank finalized its policy regarding the program in October 2007 and began marketing the program in December 2007.

TAXATION IN INDIAN COUNTRY

The Tax Commissioner reported on motor vehicle fuels tax and special fuels tax agreements between the state, through the Tax Department, and the state's Indian tribes. At present the state is a party to three fuels tax agreements. Since January 1999 the state and the Standing Rock Sioux Tribe have had a business relationship whereby the state collects and administers the tribe's motor vehicle fuels tax and special fuels tax, in addition to the state's taxes. The Tax Commissioner reported that this relationship served as the model for business relationships that have been entered by the state and other tribal governments.

In October 2006 the state and the Spirit Lake Nation entered a similar motor vehicle fuels tax and special fuels tax collection and administration agreement.

In October 2007 the state began providing collection and administration services to the Three Affiliated Tribes - Mandan, Hidatsa, and Arikara Nation. Under this agreement, the tribal share of revenue collected from motor vehicle fuels tax and special fuels tax amounted to $348,105.55 through April 2008.

The Tax Commissioner reported that the state hopes to finalize a similar motor vehicle fuels tax and special fuels tax agreement with the Turtle Mountain Band of Chippewa Indians before the end of 2008.

Each agreement provides that the Tax Department will collect and administer the tribal government's motor vehicle fuels taxes and special fuels taxes on fuel purchases made on the tribe's reservation by its enrolled members based upon ordinances enacted by that tribe's governing body. Each agreement also provides that the state will continue to collect and administer the state's motor vehicle fuels taxes and special fuels taxes on fuel purchases made by non-American Indians on each reservation under NDCC Chapters 57-43.1 and 57-43.2. In the absence of a collection and administration agreement, state law provides for a refund of the state fuels taxes paid by an American Indian after December 31, 2004, if the purchase was made on the reservation where that American Indian is enrolled. A refund claim must be filed before July 1 of the year following the year in which the purchase was made. In the case of the tribes that have entered agreements and have enacted ordinances imposing tribal fuels tax on purchases by enrolled members of that tribe in lieu of state taxes, however, none of the ordinances contains a refund provision for those tribal fuels taxes paid. The Tax Commissioner reported that this holds true for motor vehicle fuels and special fuels purchased by the members of the Standing Rock Sioux Tribe and the Spirit Lake Nation because those agreements have been in place for a number of years. As a result, enrolled members of both tribes have been paying tribal tax on motor vehicle fuels and special fuels purchased on their respective reservations, and are ineligible for a refund of state taxes because they did not pay the state taxes when making those fuel purchases.

In contrast, the agreement between the Tax Department and the Three Affiliated Tribes - Mandan, Hidatsa, and Arikara Nation was entered in late 2007. The Tax Commissioner reported that as of October 1, 2007, motor vehicle fuels and special fuels purchased by enrolled members of the Three Affiliated Tribes - Mandan, Hidatsa, and Arikara Nation, made on the Fort Berthold Reservation were subject to the tribe's fuels taxes, and no longer the state's fuels taxes. However, purchases of motor vehicle fuels and special fuels by enrolled members of the Three Affiliated Tribes - Mandan, Hidatsa, and Arikara Nation made on the Fort Berthold Reservation from January 1, 2007, through September 30, 2007, were subject to the state's fuel taxes. Accordingly, enrolled members of the Three Affiliated Tribes - Mandan, Hidatsa, and Arikara Nation who made purchases of motor vehicle fuels and special fuels on the Fort Berthold Reservation during this January to September 2007 window are eligible to receive a refund of the state fuels taxes paid, provided purchasers satisfy the requirements of state law regarding proof of purchase.

The Tax Commissioner reported that the state has engaged in preliminary discussions with representatives of the Turtle Mountain Band of Chippewa Indians pertaining to negotiation of an agreement similar to the three existing agreements. However, no agreement is in place and enrolled members of the Turtle Mountain Band of Chippewa Indians who make fuel purchases on their reservation continue to pay state fuels taxes on those purchases. As such, these purchasers remain eligible for a refund of taxes paid, provided they satisfy the requirements of state law regarding proof of purchase. The state law providing eligibility for a refund under qualifying circumstances, NDCC Section 57-43.1-03.2, provides that the purchases be made from a retail fuel dealer located on the reservation where the American Indian is an enrolled member. Because of this specific, clear, statutory language, purchasers of motor vehicle fuels and special fuels from areas outside the exterior boundaries of a reservation, such as lands held in trust by the United States Secretary of the Interior, are subject to state fuels taxes and not eligible for a refund under this law. The Trenton Indian Service Area is such an area.

The Tax Commissioner reported on individual American Indian motor vehicle fuels tax refunds for the 2007 calendar year issued through June 16, 2008. Of 144 applications by 129 different individuals, 136 applications, or 94 percent, had been paid. One hundred twelve of the 136 claims were paid in full and 24 claims were paid in part. Of the 136 paid claims, 13 claims had been returned to applicants for correction and resubmission. Of the eight unpaid applications, three claims were not able to qualify due to receipts from a reservation other than the reservation of enrollment, receipts from a prior year, or receipts from a reservation with a tribal agreement--i.e., Spirit Lake Reservation. Five applications that were returned to applicants with information on how to correct them have not been resubmitted. The reasons the applications were returned included an application received without

receipts, receipts received without an application, an application without tribal identification or only partial tribal identification, the receipts did not identify the applicant, and an application was missing a signature or Social Security number. Of the applications that were partially denied, 17 were October through December receipts from Three Affiliated Tribes - Mandan, Hidatsa, and Arikara Nation claims, which do not qualify for a refund due to a tribal tax in effect as of October 1, 2007. The remaining seven partially paid claims were denied because receipts were from an off-reservation purchase, receipts were from a reservation other than the reservation of enrollment, applications included diesel fuel with a gas refund or vice versa, applications included transposed numbers or other errors in calculation, receipts did not indicate the fuel type or gallons, or receipts from 2008 were submitted with an application for 2007.

The tax director of the Standing Rock Sioux Tribe reported that the state and the tribe have had a tobacco tax agreement since 1993 and a motor vehicle fuels tax agreement since 1999. The tribe receives approximately $250,000 per year under the motor vehicle fuels tax agreement. The tribe receives 75 percent of revenue less a 2 percent administration fee paid to the state. However, the Standing Rock Sioux Tribe tax director noted that the tribe does not enjoy a sales tax exemption similar to other governmental entities. It was noted that the Legislative Assembly considered a bill in 2003 which would have provided sales and use tax exemptions for purchases by an Indian tribe. In an effort to promote positive government-to-government relations, the tax director of the Standing Rock Sioux Tribe and the tax director of the Spirit Lake Nation urged the committee to consider a bill draft to extend this exemption to Indian tribes.

Committee Considerations

The committee considered a bill draft to establish a sales and use tax exemption for purchases by an Indian tribe. Members of the committee noted that extending this exemption to purchases made by Indian tribes would promote state-tribal relations with the state treating Indian tribes the same as it does other governmental entities. A representative of the Tax Department estimated that, if enacted by the Legislative Assembly in 2009, the proposal would reduce state general fund and state aid distribution fund revenues by $30,000 to $40,000 during the 2009-11 biennium.

Recommendation

The committee recommends Senate Bill No. 2053 to provide a sales and use tax exemption for purchases by an Indian tribe.

TRANSPORTATION IN INDIAN COUNTRY

North Dakota Century Code Section 24-02-02.3 provides:

> Notwithstanding the provisions of chapter 54-40.2, the director may enter into agreements with any one or more tribal governments for the purpose of construction and maintenance of highways, streets, roads, and bridges. Each agreement may not exceed twenty-five thousand dollars.

The committee discussed the feasibility of the Department of Transportation entering agreements between the state and Indian tribes for state maintenance of roads in Indian country. Representatives of the Department of Transportation testified that the department's primary responsibility is to maintain the state's highway system and the department is facing several challenges. Inflation continues to be one of the greatest challenges facing the transportation industry, and the department is facing serious staffing shortages as a result of losing employees in western North Dakota to the oil and gas industry.

Committee Considerations

The committee considered a bill draft relating to Department of Transportation agreements with tribal governments which would remove the $25,000 limitation on such agreements. Representatives of the department testified in support of the bill draft. Several committee members noted that the $25,000 limitation was outdated.

Recommendation

The committee recommends Senate Bill No. 2054 to remove the $25,000 limitation on Department of Transportation agreements with tribal governments.

TRIBAL-STATE NATURAL RESOURCES ISSUES

The committee reviewed memorandums of understanding between the Three Affiliated Tribes - Mandan, Hidatsa, and Arikara Nation's Fish and Game Department and the North Dakota Game and Fish Department concerning regulation of fishing and boating on the Fort Berthold Reservation and the regulation of hunting on the Fort Berthold Reservation. The purpose of the memorandums of understanding is to facilitate a cooperative law enforcement effort between the Game and Fish Department and the Three Affiliated Tribes - Mandan, Hidatsa, and Arikara Nation relating to fishing and boating violations falling under each party's authority and hunting violations falling under each party's authority. The memorandums of understanding are the first of their kind between the department and an Indian tribe in North Dakota.

The committee reviewed efforts to identify and mark hazards in Lake Sakakawea. The committee learned that the Game and Fish Department had requested information from the Attorney General on the marking of potential dangers or hazardous conditions on lakes and rivers and the liability of the Game and Fish Department. The Attorney General concluded the department probably does not have a duty to mark dangerous conditions in the absence of willful or malicious conduct, and if the department starts marking hazards the marking must be done in a nonnegligent manner.

The committee received information on the production of oil and gas from the Bakken Formation, including information on the geology, engineering of

horizontal drilling, and estimated recoverable reserves of the Bakken Formation. The committee learned the original oil in place of the Bakken Formation within the thermally mature portion of the state is estimated to be 149.2 billion barrels. The Bakken Formation's estimated ultimate recovery using current drilling and completion practices within the thermally mature portion of the state has been estimated at 1.4 percent of the original oil in place or 2.1 billion barrels. The committee learned that the discovery and development of technology to exploit the Bakken Formation is the single largest event affecting the state's petroleum industry since the discovery of oil in 1951.

The committee received information from the State Engineer concerning implementation of the emergency drinking water program. This program is designed to assist communities, tribes, and rural water systems to obtain water from the Missouri River system, which includes the main stem of the Missouri River, Lake Sakakawea, and Lake Oahe. The committee learned that the water intake issues at Garrison and Mandaree have been resolved and that the Bureau of Reclamation is lowering water intakes at Twin Buttes, Four Bears, and White Shield. No request for an emergency water supply project has been made since the Legislative Assembly adjourned in 2007.

The committee reviewed efforts by the Three Affiliated Tribes - Mandan, Hidatsa, and Arikara Nation to construct a petroleum refinery on the Fort Berthold Reservation. The project first appeared in the Federal Register on November 7, 2003. An environmental impact statement was conducted--the first environmental impact statement ever required for a petroleum refinery. The environmental impact statement was required because the refinery will be constructed on Indian trust land. The draft environmental impact statement was released June 6, 2006. The comment period has closed and the final environmental impact statement is ready to be published in the Federal Register. However, the committee learned that the Bureau of Indian Affairs has stated it has not had sufficient time to review the document even though it has had the document since June 2006. Publication in the Federal Register is important because then the 60-day time period will begin to run, and after 60 days the National Pollutant Elimination Discharge System permit may be issued and construction may commence.

The committee instructed the chairman of the Tribal and State Relations Committee to seek approval from the chairman of the Legislative Council and, upon approval, forward a letter to the Bureau of Indian Affairs urging the bureau to expedite its review of the environmental impact statement relating to the Three Affiliated Tribes - Mandan, Hidatsa, and Arikara Nation's refinery project.

CHILD SUPPORT ENFORCEMENT IN INDIAN COUNTRY

The committee reviewed periodic reports concerning the interaction of child support enforcement services between the tribes and the state. The Three Affiliated Tribes - Mandan, Hidatsa, and Arikara Nation is the only tribe in North Dakota that has a federally funded child support enforcement program. Representatives of the Child Support Enforcement Division of the Department of Human Services reported that the state and the Three Affiliated Tribes - Mandan, Hidatsa, and Arikara Nation have developed a government-to-government working relationship. The state and the Three Affiliated Tribes - Mandan, Hidatsa, and Arikara Nation have entered a cooperative agreement concerning child support enforcement. A review of statistics showed an estimated 700 cases with lack of jurisdiction on which no further collection action was being taken before the cooperative agreement. The cooperative effort began with recognition that each party is a sovereign government receiving federal funding for the operation of a child support program. The cooperative effort protects the cultural diversity of tribal members and citizens of the state and there is a desire to cooperate and share resources and expertise to ensure parents and children receive necessary child support. To the greatest extent possible, the cooperative effort recognizes that only one entity should provide child support enforcement services.

Representatives of the state Child Support Enforcement office reported that progress between the state and the Standing Rock Sioux Tribe is occurring. However, the committee learned that interactions between the state Child Support Enforcement office and the Turtle Mountain Band of Chippewa Indians have not been as successful as with other tribes. The committee learned that child support enforcement cases involving the Turtle Mountain Band of Chippewa Indians with concurrent jurisdiction that would have been taken to tribal court are now moving into state court as that is the only avenue available to the state.

INDIAN CASE MANAGEMENT, SOCIAL SERVICES, AND HEALTH ISSUES

The committee reviewed the provision of home and community-based services to tribal members. Case management for home and community-based services may be defined as the process within the framework of social work practice of providing specialized assistance to aged and disabled individuals desiring and needing help in selecting or retaining resources and services and of coordinating the delivery of the services to assist functionally impaired persons to remain in the community in the most effective manner.

The committee learned that as of November 7, 2007, there were 115 active cases on the Turtle Mountain Reservation, 104 on the Fort Berthold Reservation, 37 on the Spirit Lake Reservation, and 12 on the Standing Rock Reservation. There were 90 clients identified as American Indian on the Turtle Mountain Reservation, 61 on the Fort Berthold Reservation, 32 on the Spirit Lake Reservation, and 9 on the Standing Rock Reservation. Representatives of the Medical Services Division of the Department of Human Services reported that the potential annual case management payment is $33,211 for the Turtle Mountain Reservation, $23,165 for the Fort Berthold Reservation, $11,007 for the Spirit Lake Reservation, and $2,791 for the Standing Rock Reservation.

The committee learned that the Medicaid state plan limits case management services to be delivered by public agencies that have individual case managers who meet specific qualifications. North Dakota Administrative Code Chapter 50-06.2 allows case management services to be provided by county agencies and human service centers. North Dakota Administrative Code Chapter 50-24.5 allows case management services to be provided by a county agency. The home and community-based services Medicaid waiver requires that individuals providing case management services meet minimum qualifications. On December 4, 2007, the Centers for Medicare and Medicaid Services issued an interim final rule, which proposes to make significant changes to Medicaid-funded case management. As a result of changes required by this rule, the Department of Human Services will be required to modify and submit various state plan amendments in order to assure continued Medicaid coverage of allowable case management services. The committee learned that it is the department's intention to submit language to the Centers for Medicare and Medicaid Services which would allow the community health representatives to provide case management services to American Indian elders. The committee learned that no direct care services may be claimed as case management, but only those activities defined by the Centers for Medicare and Medicaid Services will be eligible for Medicaid case management reimbursement. These activities include assessment of an individual to determine that person's service needs; development of a care plan that addresses the service needs identified in the assessment; referral and related activities to help an individual obtain needed services; and monitoring and followup activities, including contacts, to ensure the care plan is effectively implemented.

Representatives of Rolette County Social Services briefed the committee on county human service caseloads in Indian country. County social service providers are charged with providing many services, including temporary assistance for needy families (TANF), food stamps, medical assistance, fuel assistance, child care, foster care, home and community-based services, and child protection services. Rolette County is one of the few rural counties in North Dakota with a growing population. As a result, the challenges facing county social service providers in Rolette County are great. These include providing transportation for clients to services, affordable housing, lack of medical care, and attracting and retaining staff. The committee learned that reimbursement rates are substantially below the actual cost of providing services and that social service providers are unable to compete in attracting and retaining staff to provide needed services. The committee learned that 650 of the state's 2,400 TANF cases are in Rolette County. Twenty-six percent of the state's TANF cases are in the Devils Lake region, which includes the Spirit Lake Reservation and the Turtle Mountain Reservation.

Committee Considerations

The committee received testimony from tribal and local social service office representatives that tribes should be more involved in identifying social service needs on the state's reservations and forwarding this information to the Department of Human Services to be used in preparation of the department's budget. The committee considered a concurrent resolution draft directing the Legislative Council to study the sustainability of tribal social service programs. A member of the committee noted the resolution reflects a concern of the Legislative Assembly with the sustainability of tribal social service programs and the study directed by the resolution will examine participation by tribal social service programs in development of the state's human services budget.

Recommendation

The committee recommends House Concurrent Resolution No. 3003 directing the Legislative Council to study the sustainability of tribal social service programs.

NORTHERN PLAINS INITIATIVE

The committee received information concerning the Northern Plains Initiative developed by Rural Dynamics, Inc. Rural Dynamics, Inc., was founded in 1968 in Montana as a consumer credit counseling service to provide credit counseling to residents across Montana and Wyoming. The organization provides programs and establishes partnerships to help youth, individuals, and families achieve economic independence. The vision of Rural Dynamics, Inc., is to develop and maintain a new generation of financially educated and responsible consumers. Rural Dynamics, Inc., is a private, nonprofit corporation dedicated to providing confidential and professional counseling in aiding and rehabilitating financially distressed families and individuals regardless of race, creed, color, sex, social position, or financial status and in fostering community. The organization provides consumer education on money management and intelligent use of credit.

The Northern Plains Initiative and Rural Dynamics, Inc., reported a number of successes. These include the common dialogue program, match savings program, free tax preparation program, and family economic security program. The common dialogue program identifies the wants and needs of Indian country and attempts to address these identified needs. The match savings program is a service provided whereby Rural Dynamics, Inc., promotes individual development by matching individual savings. The family economic security program assists families in preparing budgets, financial education, and homeownership incentives. Rural Dynamics, Inc., has invested $50,000 in the Montana Indian Business Alliance and is planning to invest $35,000 in the South Dakota Indian Business Alliance. Representatives of the program reported that it would like to establish a similar program in North Dakota.

ELEMENTARY AND SECONDARY EDUCATION IN INDIAN COUNTRY

Representatives of the Standing Rock Community School briefed the committee on elementary and secondary education issues on the Standing Rock Reservation. They noted that tribally controlled or tribal grant schools are not eligible to receive state foundation aid and urged the committee to amend NDCC Section 15.1-29-10 to provide that "[a] school board may contract with federal and tribal officials for the education of students in a federal or tribal school." Standing Rock Community School officials noted that the Standing Rock Community School system is struggling to retain and attract teachers, counselors, and special education staff members, and this change would assist the school district in providing a quality education for its students.

Representatives of Trenton Public Schools briefed the committee on elementary and secondary education issues of the Trenton Service Area. Representatives of Trenton Public Schools reported that the school district is facing severe financial pressure as a result of losing $1.9 million in federal Indian School Equalization Program funds for 2008-09. The school district usually receives $3.2 million. To deal with this issue, Trenton Public Schools has developed a barebones budget proposal for 2008-09 which cuts several positions, programs, and services. The committee learned that the Department of Public Instruction does not have any emergency funds available and Trenton Public Schools receive foundation aid based upon the state formula. Representatives of the Department of Public Instruction reported that the reduction in Indian School Equalization Program funds is a federal issue and the state is not in the position to provide substitute state funding.

The committee reviewed concerns relating to 21st Century Learning Centers in Indian country. Twenty-first Century Learning Centers are funded from a federal grant and designed to replace latchkey programs for children. Grants are designed to enhance academic performance in reading, mathematics, and science. The committee learned the state was required to submit a plan containing performance measures in order to receive a grant. The program is designed for schools identified as located in high-poverty areas, and, in order to maximize the grant and make it available to smaller schools, it was determined to allow regional education associations to apply for the grants. Some previous recipients believed that only regional education associations would be eligible for 21st Century Learning Center grants, but representatives of the Department of Public Instruction informed the committee that all current grantees as well as regional education associations could apply for 21st Century Learning Center grants.

Committee Considerations

The committee considered a concurrent resolution draft directing the Legislative Council to study Indian education issues. The resolution notes that the rate of population growth on the state's Indian reservations is one of the highest growth rates in the state, that a larger percentage of Indian youth remain in the state upon graduation than do other youth, that good quality education is essential for Indian youth to fully develop their talents and contribute to the general welfare of the state, and that many schools in Indian country are challenged by school finance issues.

Recommendation

The committee recommends House Concurrent Resolution No. 3004 directing the Legislative Council to study Indian education issues.

HIGHER EDUCATION IN INDIAN COUNTRY

The committee reviewed licensure of American Indian language instructors. Representatives of Sitting Bull College reported that the mission of Sitting Bull College is to promote American Indian language and culture, specifically Lakota language and culture. However, because the Standing Rock Reservation is located in two states, Sitting Bull College has to meet South Dakota and North Dakota proficiency tests for licensing American Indian language instructors. The committee learned that the South Dakota and North Dakota standards are different, and Sitting Bull College would like a uniform process to train and eventually license American Indian language instructors. One difference between the South Dakota and North Dakota certification standards is that South Dakota requires an examination while North Dakota's statute provides that qualification is determined by an indigenous language board established by a tribal government. Other tribal college representatives cautioned the committee on revising the North Dakota statute and recommended the committee defer to tribal councils or leaders to certify individuals who are qualified to teach American Indian languages.

The committee reviewed implementation of legislation enacted by the 60th Legislative Assembly relating to grant assistance payments concerning tribally controlled community colleges. Representatives of the State Board of Higher Education briefed the committee on implementation of the program. They informed the committee that implementation is proceeding very well but recommended that language requiring a report on the ethnic status of students be deleted from the reporting requirement.

The president of Cankdeska Cikana Community College reported that the institution has received $17,500 under the program. The college is applying the funds to student support services. The president of Sitting Bull College reported that the institution has received $35,000 under the program. A representative of United Tribes Technical College reported that the institution has received $350,000 under the program which has been used for programs for promoting the appreciation of diversity, scholarships, and funding a financial aid counselor. United Tribes Technical College and Turtle Mountain Community College received two-thirds of the available funding under the program because of the number of non-Indian students enrolled at those colleges.

The committee learned that there has been a change in federal law pursuant to reauthorization of the federal Higher Education Act. Under the reauthorized Act,

nonenrolled descendents of enrolled members are eligible for federal funding for attending a tribally controlled college. North Dakota Century Code Chapter 15-70 defines nonbeneficiary student as a resident of North Dakota who is enrolled in a tribally controlled community college but is not an enrolled member of a federally recognized Indian tribe. If the change in federal law is not recognized in state law, it may allow a student to be counted as a beneficiary student for federal purposes and a nonbeneficiary student for state purposes allowing a tribally controlled college to receive a double payment for attendance by that student at a tribally controlled college.

Representatives of several tribal colleges said the threshold limitation of $4,581 for each nonbeneficiary student attending a tribally controlled community college should be revised. The committee learned that as a result of the change in federal law, the state's tribal colleges may not be able to access all of the funds appropriated in House Bill No. 1395 (2007) to provide financial assistance to tribally controlled community colleges.

Committee Considerations

The committee considered a bill draft relating to financial assistance to tribal colleges. The bill draft revised the definition of nonbeneficiary student to include the biological child of a member, living or deceased, of an Indian tribe, as well as an enrolled member of a federally recognized Indian tribe. The bill draft also clarified that full-time equivalent basis is equal to 24 credit-hours per year in which a nonbeneficiary student is enrolled. Concerning submission of grant applications, the bill draft included a requirement that the application include documentation of enrollment status of each student on whose account financial assistance is sought. The bill draft increased the payment for each nonbeneficiary student on a full-time equivalent basis from $4,581 to $5,304. Concerning reporting requirements, the bill draft required that each institution receiving a grant provide annually an accurate and detailed account of expenditures of the grant funds received by the institution to the Budget Section of the Legislative Council and a copy of each institution's audit report to the Legislative Audit and Fiscal Review Committee. Finally, the bill draft was declared an emergency measure.

Recommendation

The committee recommends House Bill No. 1058 relating to financial assistance to tribal colleges which revises the definition of nonbeneficiary student, provides that grant applications include documentation of enrollment status, increases the grant payments from $4,581 to $5,304 per nonbeneficiary student, and provides reporting requirements to the Budget Section of the Legislative Council and the Legislative Audit and Fiscal Review Committee.

INDIAN AFFAIRS COMMISSION

The committee reviewed the membership, mission, and powers and duties of the Indian Affairs Commission. The committee noted that the names of several of the state's tribes had been revised since enactment of NDCC Section 54-36-01, which lists the members of the commission. The executive director of the Indian Affairs Commission recommended that the commission be allowed to accept gifts, grants, donations, legacies, and devises from any source and that the money be appropriated for the purposes of the commission.

A member of the task force noted the current statute provides that the Indian Affairs Commission may assist and mobilize the support of state and federal agencies in assisting Indian individuals and groups in North Dakota. The members of the Indian Affairs Commission and task force felt that this duty should be mandatory and recommended that this change be made.

Recommendation

The committee recommends House Bill No. 1059 to update the tribal names for members of the Indian Affairs Commission, make it a duty of the Indian Affairs Commission to assist and mobilize the support of state and federal agencies in assisting Indian individuals and groups in North Dakota mandatory, and allow the commission to accept gifts, grants, donations, legacies, and devises from any source which are appropriated for the purposes of the commission.

TRIBAL AND STATE RELATIONS COMMITTEE

The Tribal and State Relations Committee expires as of July 31, 2009. Several committee members noted the committee is working well and is providing an opportunity for the Legislative Assembly to study issues relating to Indians indepth. Also, several issues under review by the committee need further study and committee members felt the committee should be extended for another interim.

Recommendation

The committee recommends House Bill No. 1060 to extend the Committee on Tribal and State Relations through July 31, 2011.

TRIBAL FLAG DISPLAY IN LEGISLATIVE WING

The issue of displaying the flags of the five tribes of North Dakota in the legislative wing was raised. Several committee members agreed that displaying the flags of the state's tribes would reflect the respect that the Legislative Assembly and the state of North Dakota have for the state's tribes. However, due to the variables involved in the issue, such as the size of the flags and whether they should be located in the Memorial Hall, the rear of each chamber, or the front of each chamber, several committee members noted the best solution would be to recommend that the Legislative Council arrange for the proper display of the tribal flags in the legislative wing.

Recommendation

The committee recommends that the Legislative Council arrange for the display of flags from the state's five tribes in an appropriate place in the legislative wing of the State Capitol.

OIL AND GAS TAX AGREEMENT

The Legislative Council directed that the committee receive a report from the Governor describing the negotiations and terms of any agreement between the Governor and the Three Affiliated Tribes - Mandan, Hidatsa, and Arikara Nation relating to taxation and regulation of oil and gas exploration and production within the boundaries of the Fort Berthold Reservation; and thereafter receive biennial reports describing the agreement's implementation and any difficulties in its implementation. The committee received periodic reports from representatives of the Governor's office concerning negotiations with the Three Affiliated Tribes - Mandan, Hidatsa, and Arikara Nation and the eventual agreement. Representatives of the Governor's office reported that an agreement was signed June 10, 2008. Under the agreement, the total tribal and state tax rate applicable to production and extraction of oil from trust lands is 11.5 percent. The total state tax rate attributable to production and extraction of oil from nontrust lands is 11.5 percent with a 60-month exemption from the extraction tax--effectively 5 percent for 60 months--and 11.5 percent thereafter. All state exemptions apply on the reservation except the 60-month extraction tax exemption on trust land and the Bakken exemption on both trust and nontrust lands.

WORKERS' COMPENSATION REVIEW COMMITTEE

North Dakota Century Code (NDCC) Section 54-35-22 establishes the Workers' Compensation Review Committee. The committee is directed by law to review workers' compensation claims brought to the committee for the purpose of determining whether changes should be made to the workers' compensation laws. Section 54-35-22 establishes the membership of the six-member committee as follows: two members of the Senate who are appointed by the majority leader of the Senate, one member of the Senate who is appointed by the minority leader of the Senate, two members of the House of Representatives who are appointed by the majority leader of the House of Representatives, and one member of the House of Representatives who is appointed by the minority leader of the House of Representatives.

Committee members were Representatives George J. Keiser (Chairman), Bill Amerman, and Donald D. Dietrich and Senators Nicholas P. Hacker, Richard Marcellais, and Terry M. Wanzek.

The committee submitted this report to the Legislative Council at the biennial meeting of the Council in November 2008. The Council accepted the report for submission to the 61st Legislative Assembly.

BACKGROUND

General Background

The state laws addressing workers' compensation in North Dakota are primarily found in NDCC Title 65. The administrative rules adopted by Workforce Safety and Insurance (WSI) are found in North Dakota Administrative Code Title 92. Additionally, Article X, Section 12, of the Constitution of North Dakota specifically addresses the state's workers' compensation agency, essentially providing for a constitutional continuing appropriation to the workmen's compensation fund for the purpose of paying workers' compensation benefits. North Dakota Century Code Section 54-35-22 became effective August 1, 2005, and was originally set to expire August 1, 2007; however, this expiration clause was repealed in 2007. The committee must meet once each calendar quarter unless the committee chairman determines a meeting that quarter is not necessary because there is no claim to review. The committee is required to operate according to the laws and procedures governing the operation of other Legislative Council interim committees. The committee followed the typical interim calendar.

2007-08 Interim

During the 2007-08 interim, the Workers' Compensation Review Committee and the Industry, Business, and Labor Committee were two interim committees specifically charged with studying workers' compensation-related issues. In accordance with a directive of the chairman of the Legislative Council, the Industry, Business, and Labor Committee reviewed WSI premiums, benefits, and accountability and transparency methods and the results of consultant reviews of claims review, human resources, and management areas.

In addition, the Legislative Audit and Fiscal Review Committee was charged with receiving annual reports from the executive director of WSI and the chairman of the WSI Board of Directors under NDCC Section 65-02-03.3 and with receiving a report from the executive director of WSI, chairman of the WSI Board of Directors, and the auditor regarding the biennial performance audit of WSI under Section 65-02-30; the Budget Section was charged with receiving periodic reports from WSI 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 Chapter 32-12.2 under Section 65-04-03.1; and the interim Industry, Business, and Labor Committee was charged with receiving from WSI a safety audit of the Roughrider Industries work program and performance audit of the program of modified workers' compensation coverage under NDCC Section 65-06.2-09.

REVIEW PROCEDURE

The committee began the interim by establishing a procedure and protocol for conducting its charge. The committee made minor revisions to the application packet used during the 2005-06 interim. The revised application packet included a cover letter explaining the application process and eligibility requirements, a copy of NDCC Section 54-35-22, a "Release of Information and Authorization" form, and a "Review Issue Summary" form.

The committee discussed how best to notify the public of the committee's activities in order to solicit injured employees to have their claims reviewed, confidentiality and how to protect the confidentiality of the WSI records of injured employees, and whether there are steps the committee could take to better assist injured employees in organizing their issues for review.

The committee notified all legislators of the committee's charge and made an affirmative decision to attempt to hold committee hearings around the state as may be appropriate to accommodate the location of the injured employees having their claims reviewed by the committee.

The committee adopted the following procedure, which was used during the previous interim to determine eligibility for a claim review and to prepare the injured employee for the committee meeting at which the claim was reviewed:

1. An injured employee would submit to the Legislative Council office a complete "Release of Information and Authorization" form. In addition, the applicant could submit a "Review Issue Summary" form on which the applicant could summarize the issues the applicant wanted the committee to review.
2. Upon receipt of a completed application, the Legislative Council staff forwarded a copy of the application information to an assigned

ombudsman at WSI's Office of Independent Review (OIR), who reviewed the application to make a recommendation regarding whether:
   a. The applicant was an injured employee or the survivor of an injured employee;
   b. The workers' compensation claim was final; and
   c. All of the administrative and judicial appeals were exhausted or the period for appeal had expired.
3. Following this review, the ombudsman contacted the Legislative Council staff to provide a recommendation regarding eligibility for review. Upon receipt of this recommendation, the Legislative Council staff contacted the committee chairman to make a determination of eligibility.
4. Upon a determination of eligibility, the injured employee was contacted by Legislative Council staff and the ombudsman to begin the case preparation.
   a. Regardless of whether the injured employee accepted the assistance of the ombudsman, the ombudsman prepared a summary of the case to present at the committee meeting.
   b. At the injured employee's discretion, the ombudsman assisted the applicant in organizing the issues for review.
   c. The ombudsman prepared a case review packet and included this in a binder of information prepared for each committee member, committee counsel, and the WSI representative. Although these binders were distributed at each committee meeting, they remained the property of OIR and were returned at the completion of each committee meeting.
5. Before each committee meeting, the ombudsman met with committee counsel to review the case summary and workers' compensation issues being raised.
6. Upon receipt of these workers' compensation issues, committee counsel notified the WSI representative of the identity of the injured employee who would be appearing before the committee for a case review, and, as appropriate, the statutory cites of the basic issues being raised by the injured employee.

The committee established the following committee meeting procedure, which was followed for each of the 15 claims reviewed by the committee:

1. Committee members had an opportunity before and during each committee meeting to review the binder of claim review packets and to review each injured employee's WSI electronic records.
2. The ombudsman summarized the injured employee's case.
3. The committee received a list of the workers' compensation issues brought forward for review. At the discretion of the injured employee, these issues were presented by the ombudsman, the injured employee, a representative of the injured employee, or more than one of these individuals.
4. One or more representatives of WSI commented on the workers' compensation issues raised.
5. Interested persons were invited to comment on the workers' compensation issues raised as part of the claim review.
6. The committee members had an opportunity to discuss the issues raised.

Each of the 15 claims reviewed was allocated a half-day--either the morning, afternoon, or evening portion of a committee meeting--during which the initial review was conducted. Following the initial review, the committee retained the authority to continue to discuss issues raised as part of the review. Periodically, the committee would request additional information on specific issues and review this information at one or more future meetings. During each committee meeting at which claims were reviewed, a WSI representative was available to access the injured employee's WSI records electronically.

CLAIMS REVIEWED

First Claim

Claim Summary

The following is a chronology of events of the injured employee's claim:

- January 1999 - The injured employee was a firefighter who filed an application for workers' compensation benefits as the result of chest tightness and shortness of breath.
- February 1999 - Workforce Safety and Insurance denied the claim on the basis that the chest discomfort was caused by nonemployment factors, including a bicuspid aortic valve, which is a congenital condition affecting 1 percent to 2 percent of the population. The injured employee returned to work as a firefighter.
- March 2006 - The injured employee filed a second application for workers' compensation benefits claiming an enlarged aorta, leaking heart valve, and high blood pressure.
- April 2006 - Workforce Safety and Insurance accepted liability for the injured employee's hypertension, but denied his application for the aortic valve condition, claiming the issue had been addressed in 1999.
- May 2006 - The injured employee requested reconsideration of the April 2006 decision, claiming a 1999 postoperative valve replacement diagnosis established aortic insufficiency, a tricuspid valve, and that the surgical finding showed the injured employee did not have a congenital bicuspid valve as previously believed.
- June 2006 - Workforce Safety and Insurance opined that at surgery the aortic valve was found not to be congenitally abnormal and, based on this information, WSI determined the injured employee met the criteria for the firefighter presumption under NDCC Section 65-01-15.1 and accepted his claim.
- October 2006 - Workforce Safety and Insurance directed the injured employee to undergo an independent medical examination (IME). The

IME doctor opined the valvular heart disease was not a congenital condition but had developed as a result of a valvular infection in the past that caused the condition. The IME doctor further opined a possible but less likely possibility was the injured employee might have had subclinical rheumatic fever as a child.

- November 2006 - Workforce Safety and Insurance issued a notice of decision denying further liability, finding the injured employee's valvular heart disease was caused by a prior infection or rheumatic fever and not any work-related activity.
- December 2006 - The injured employee requested reconsideration of the November 2006 decision, claiming WSI did not have any objective medical evidence the injured employee's heart condition was not the result of his work as a firefighter.
- February 2007 - Workforce Safety and Insurance issued an order revoking the June 2006 acceptance of the injured employee's benefits and denied any further benefits.
- October 2007 - Workforce Safety and Insurance entered a stipulated agreement with the injured employee which essentially reversed the WSI denial.
- The Workforce Safety and Insurance representative reported that following the injured employee's claim review by the committee, the injured employee had a setback in health and has had to stop his vocational rehabilitation plan at this time and is therefore receiving full benefits. However, the injured employee did incur an overpayment due to income he received from firetruck sales. The injured employee was entirely forthcoming regarding the possibility of receiving payment for earlier sales and for that reason he had been requested to provide WSI verification of income by submission of federal income tax filings. With the most recent submission, WSI determined there was a $9,000 overpayment. The parties were working on a stipulation to provide the injured employee an extended period of time to pay back this overpayment.

Issues for Review

The workers' compensation issues raised by the injured employee included:

- Workforce Safety and Insurance should not have denied benefits unless there was evidence showing the condition was not work related.
- The Office of Independent Review should be empowered to do more and should be entirely independent of WSI.
- The claim took too long to be resolved and should never have gone past the reconsideration stage or OIR stage. Workforce Safety and Insurance should be required to adhere to strict time limits, just as the injured employee is required to do. This claim took 582 days from the initial claim to the final decision. Additionally, WSI had not been timely in paying medical bills.
- The notice of denial should be easier for a layperson to understand. The fine print is not consumer-friendly.
- The tone of correspondence from WSI to injured employees should be less adversarial.
- The fact WSI can reverse its own rulings at any time results in a poor relationship between WSI and the injured employee. Additionally, WSI should be required to do its research and investigation thoroughly and quickly at the beginning of a claim instead of putting injured employees through the roller coaster ride of being denied, approved, terminated, and finally approved.
- Mileage reimbursement should reflect the distance from the start of travel to the end of travel instead of from city limit to city limit.
- Independent medical examination medical providers contract to provide services to WSI and therefore are not independent.

Workforce Safety and Insurance Response

The WSI representative provided a review of NDCC Section 65-01-15.1(1), which provides:

> Any condition or impairment of health of a full-time paid firefighter or law enforcement officer caused by lung or respiratory disease, hypertension, heart disease, or an exposure to a bloodborne pathogen as defined by section 23-07.5-01 occurring in the course of employment, or occupational cancer in a full-time paid firefighter, resulting in total or partial disability or death is presumed to have been suffered in the line of duty. The condition or impairment of health may not be attributed to any disease existing before that total or partial disability or death unless the contrary is shown by competent evidence.

The injured employee's claim revolves around the last sentence of NDCC Section 65-01-15.1(1) because the law provides WSI must establish "competent evidence" to shift the burden back to the injured employee. The claim involved a very complex heart diagnosis and sometimes reaching the correct decision takes time.

The WSI representative testified he is not aware of WSI providing heightened scrutiny to high-cost claims. The injured employee's claim will not be subject to an ongoing audit, but as in all claims, if at some point additional information arises, WSI will reevaluate the claim as appropriate.

Comments by Interested Persons

The committee received the testimony of a representative of the North Dakota AFL-CIO in opposition to how the state's workers' compensation law requires a higher burden of proof of injured employees than the law requires of WSI.

The committee received the testimony of a representative of Concerned Advocates Rights for Employees (CARE) that, like this injured employee, there are injured employees across the state who live with the same fear of going to the mailbox because of the concern WSI will reverse an earlier decision.

The committee received the testimony of an injured employee that the state's workers' compensation system works well for small injuries, but when it comes to serious injuries the system does not work well.

Second Claim

Claim Summary

The following is a chronology of events of the injured employee's claim:

- October 1994 - The injured employee incurred a workplace injury to his low back and left thigh. Workforce Safety and Insurance accepted liability on the claim and paid the associated medical expenses and disability benefits.
- 1995 - The injured employee underwent a spinal fusion at the L4/L5 level, at which time WSI paid the associated medical expenses and disability benefits.
- January 2000 - The injured employee underwent spinal surgery, resulting in an anterior lumbar intrabody fusion at the L4/L5 and L5/S1 levels, an implanted proximity/BAK cage at the L4/L5 level, implantation of a femoral prosthesis of the L5/S1 level, and a pedicle fixation at the L4/L5 level. Upon recovery from surgery, the injured employee was assigned rehabilitation services.
- March 2001 - Workforce Safety and Insurance issued a notice of intention to discontinue benefits, noting the vocational rehabilitation plan was approved by WSI. The notice indicated temporary total disability (TTD) benefits would cease effective March 29, 2001, because the vocational rehabilitation plan provided the injured employee was qualified to work in the areas of computer support technician/technical support specialist, management trainee/assistant manager, and telemarketer. The injured employee reported his experience was employers were not willing to hire him and in the occasions he was hired, his physical limitations resulted in him having to quit the job.
- March 2001 - The injured employee made a timely request for reconsideration, claiming he was still disabled and unable to work and he was attending Bismarck State College in pursuit of a degree in computer information and processing because he believed it would be to his advantage to complete his computer training before returning to work.
- March 2001 - Workforce Safety and Insurance issued an order denying further disability and vocational rehabilitation benefits, indicating the injured employee was capable of acquiring gainful employment as provided under the vocational rehabilitation plan.
- April 2002 - The administrative law judge issued his recommended findings of fact, conclusions of law, and order, stating the preponderance of the evidence supported the WSI order.
- May 2002 - Workforce Safety and Insurance adopted the administrative law judge's recommended findings of fact, conclusions of law, and order. The order became final.

Issues for Review

The workers' compensation issues raised by the injured employee included:

- The injured employee disagreed with WSI's determination he was employable at the time WSI made that determination.
- The injured employee was unsatisfied with the rehabilitation services offered. Specifically, some of the concerns with rehabilitation services included the belief the functional capacity evaluation (FCE) was performed prematurely because at the time it was performed he was still healing from his surgery; WSI should have assisted in paying for his college expenses; the vocational plan for the injured employee to be a computer support technician/technical support specialist was unrealistic because he did not have the necessary experience or training; and WSI should provide assistance to the injured employee in actually conducting a job search and benefits should continue until employment is found and kept.
- The preferred worker program is inadequate. Specifically, the injured employee reported injured employees are not well enough informed and employers do not seem knowledgeable about or interested in the program.
- The WSI system is too cumbersome for medical providers and, therefore, medical providers are hesitant to treat injured employees.
- Workforce Safety and Insurance should help injured employees pay for legal representation during the appeal process.

Workforce Safety and Insurance Response

The WSI representative responded to the issues raised by the injured employee. The WSI representative reviewed NDCC Section 65-05.1-01(4), which sets out the following hierarchy of rehabilitation services available to injured employees:

> The first appropriate option among the following, calculated to return the employee to substantial gainful employment, must be chosen for the employee:
>
> a. Return to the same position.
> b. Return to the same occupation, any employer.
> c. Return to a modified position.
> d. Return to a modified or alternative occupation, any employer.
> e. Return to an occupation within the local job pool of the locale in which the claimant was living at the date of injury or of the employee's current address which is suited to the employee's education, experience, and marketable skills.
> f. Return to an occupation in the statewide job pool which is suited to the employee's education, experience, and marketable skills.
> g. Retraining of one hundred four weeks or less.

The WSI representative testified that in applying the hierarchy to this claim, although the injured employee had significant experience, education, and work history; a four-year degree; and recent coursework in electronics and computers, the first four options were not appropriate. The fifth option was the first appropriate option for the injured employee. Workforce Safety and Insurance followed the law by identifying the first available option in the hierarchy. Workforce Safety and Insurance is not an employment agency and nationwide very few states have rehabilitation services as ambitious as North Dakota's system.

The WSI representative testified a 1996 decision of the North Dakota Supreme Court ruled that NDCC Section 65-05.1-01 does not require that WSI find an injured employee a job, but that it is WSI's duty to see to it that the injured employee can reasonably compete in the job market in the state. The WSI representative stated if this role is changed, the change would dramatically alter what WSI does; it would make WSI a guarantor of payments and allow injured employees to abuse the system.

The WSI representative provided a brief overview of the preferred worker program, including steps taken to inform injured employees and employers about the program. The representative reported the program is provided under NDCC Section 65-05-36, and although there is a three-year limit that applies to each individual employee-employer relationship, there is no limit on how many times an employee uses the program nor on the number of times an employer uses the program.

As it relates to returning to work, the WSI representative reported although WSI is not empowered to force the preinjury employer to take an injured employee back in a modified position, as part of the rehabilitation services, WSI is tasked with contacting preinjury employers to try to facilitate the return of the injured employee.

Comments by Interested Persons

A representative of CARE testified 99 percent of the injured employees he works with want to return to work but there are some areas of concern. For example, WSI says jobs are available for injured employees but also says WSI is not a job placement agency. The reality is some of these injured employees are not able to find postinjury employment. He requested guidance from the experts on how best to get injured employees back to work in jobs that allow them to support themselves and their families.

Third Claim

Claim Summary

The following is a chronology of events of the injured employee's claim:

- August 2005 - The injured employee, while working as chief of police, sustained multiple gunshot wounds to his lower torso while attempting to apprehend a suspect. Workforce Safety and Insurance accepted liability for the injury and benefits were paid accordingly.
- November 2005 - The injured employee was treated by his physician for the evaluation and management of neutrophilia, a blood disorder related to an elevated white blood cell count. The physician noted the injured employee had a persistently elevated white blood cell count since his gunshot wound. Additionally, the physician opined the neutrophilia may be due to smoking and dental carries.
- April 2006 - Workforce Safety and Insurance issued a notice of decision denying benefits for medical services for the treatment of neutrophilia, a condition WSI determined to be unrelated to the workplace injury.
- April 2006 - A second physician indicated no definitive ideology for the injured employee's elevated white blood cell count. The second physician opined the elevated white blood cell count was related to the injury due to the fact there is no other appreciable cause for his elevated white blood cell count, and the only other factor that would play into this would be his gunshot wounds. A third physician noted the injured employee had an elevated white blood cell count in the past, but was of the opinion the current elevated white blood cell count since the accident was more likely the result of that injury.
- April 2006 - The injured employee filed a written request for reconsideration of WSI's April 2006 notice of decision denying benefits for medical services.
- August 2006 - The IME physician opined the elevated white blood cell count was unrelated to the gunshot wounds or any deep-seated infection or inflammation, noting no signs or symptoms of any deep-seated infection, inflammation, blood disorder, or other pathology related to any elevated white blood cell count. The IME physician noted documentation in the medical records that the injured employee's white blood cell count had been elevated as early as 2003.
- October 2006 - Workforce Safety and Insurance issued an order denying coverage of the blood disorder, indicating that the greater weight of the evidence did not indicate the neutrophilia was caused by the work injury.
- The injured employee requested assistance from OIR, and the advocate assigned to the claim reviewed the records and, in conjunction with WSI, offered a stipulated settlement to resolve the dispute by paying for one-half of the out-of-pocket expenses associated with the denied bills. The injured employee denied the settlement offer as he felt the issue of the high white blood cell count was a direct result of the work-related injury.
- March 2007 - The Office of Independent Review issued its certificate of completion with no change to the order.
- July 2007 - The administrative law judge issued the recommended findings of fact, conclusions of law, and order indicating the order denying specific benefits should be affirmed. The injured

employee had failed to establish by a preponderance of the evidence that his medical care related to the treatment of neutrophilia was related to his work injury. Workforce Safety and Insurance adopted this order and the order became final.

- The injured employee brought a civil action and entered a settlement awarding him a civil award of $150,000. In accordance with NDCC Section 65-01-09, WSI was subrogated to the rights of the injured employee to the extent of 50 percent of the damages recovered, to a maximum of the total amount WSI paid or would otherwise pay in the future in compensation and benefits for the injured employee.
- Since his injury, the injured employee returned to work in a modified position as a city administrator. Because the injured employee's postinjury employment earnings are less than his preinjury earnings, the injured employee will be eligible for temporary partial disability (TPD) benefits for a period not to exceed five years.

Issues for Review

The workers' compensation issues raised by the injured employee included:

- The denial of payment to medical facilities for the treatment of neutrophilia. The elevated white blood cell count was a direct result of the injury sustained from the gunshot wounds, worsening in periods of extreme pain related to the work injury. Any preinjury elevated white blood cell count was related to illness he was experiencing at the time the tests were run.
- Workforce Safety and Insurance should be required to pursue its own legal action against a responsible third party instead of requiring the injured employee to bring the civil action. If the injured employee brings the civil action, WSI should allow the injured employee to retain the entire monetary award for the pain and suffering endured. Workforce Safety and Insurance did not assist in the civil action but was able to benefit from all his hard work. Additionally, the communication with WSI regarding subrogation should be clearer. The injured employee had been victimized twice--first he was shot, and then WSI took 50 percent of his award without doing any of the work in the civil action.
- The TPD benefits should not be limited to a five-year period but, instead, should be based upon the injured employee's physical ability or inability to sustain the preinjury income level. The current TPD system penalizes the injured employee.
- The IME process should be revised. The injured employee never had the opportunity to meet the IME doctor, and at the administrative hearing level the IME doctor participated by telephone.

Workforce Safety and Insurance Response

The WSI representative focused on the issues of preexisting conditions, subrogation, and TPD. The WSI representative provided a review of how North Dakota's workers' compensation law addressed preexisting conditions. Generally, WSI does not cover a preexisting condition; however, if there is a preexisting condition and a work injury substantially worsens that condition, the worsening of the condition is compensable by WSI.

The WSI representative testified in this injured employee's claim, the basis for denial of services was that the blood disorder was a preexisting condition with no medical opinion linking the condition to the work injury. It is a normal reaction for an individual's white blood cell count to increase following a gunshot wound; however, typically, that count will return to normal. In this claim there was no clear ideology for the injured employee's elevated white blood cell count. As WSI reviewed the injured employee's claim as it related to coverage of medical services attributable to the blood disorder, WSI went back and reversed payment on some medical bills that had been previously paid. The WSI representative testified WSI takes these situations very seriously, and in close cases "the tie goes to the worker."

The WSI representative reviewed NDCC Section 65-01-09, North Dakota's workers' compensation subrogation law. As a matter of policy, WSI encourages injured employees to pursue civil actions. Unlike a private insurance company, WSI does not have a duty to defend an insured worker. The law provides a compromise by which WSI is limited to a maximum of 50 percent of an award and the injured employee is allowed to keep the other 50 percent of an award, thereby acting as an incentive to encourage injured employees to bring third-party actions.

The WSI representative testified that in applying the subrogation law to this injured employee's claim, the WSI benefits paid to the injured employee had exceeded the 50 percent WSI took from the civil action award.

The WSI representative testified that in comparing North Dakota's workers' compensation subrogation laws to other states', most other states' workers' compensation systems take more than North Dakota's. Comparing the workers' compensation system to the general private insurance system, a private insurer typically takes 100 percent of the civil award if the insurance company's costs equal or exceed the civil award.

The WSI representative testified TPD benefits, addressed under NDCC Section 65-05-10, are meant to be a bridge, anticipating the injured employee will be able to return to full-time employment or, after a five-year period, will be able to work up to the preinjury wages. However, in some instances the injured employee will not be able to reenter the workforce and reach preinjury wages.

Fourth Claim

Claim Summary

The following is a chronology of events of the injured employee's claim:

- October 1975 - The injured employee filed an application for workers' compensation benefits due to an injury to his lower back. Workforce Safety and Insurance accepted liability for this

injury and paid the associated medical expenses and disability benefits.

- The injured employee received wage-loss benefits through April 24, 1977, during which time he had surgery and was diagnosed with a herniated disk at L5-S1. Wage-loss benefits were terminated in April 1977 because WSI deemed the injured employee employable and capable of performing gainful employment. The injured employee underwent further medical evaluation in the late 1980s and early 1990s during which time his medical condition deteriorated.
- May 1990 - The injured employee underwent a second surgery.
- July 1990 - Workforce Safety and Insurance wage-loss benefits were reinstated and paid continually through May 5, 1994, at which time WSI declared the injured employee permanently and totally disabled (PTD).
- December 2003 - Workforce Safety and Insurance issued a notice of intention to discontinue benefits, claiming the injured employee willfully and intentionally violated NDCC Sections 65-05-33 and 65-05-08, relating to the filing of a false claim or false statement. This notice indicated all future workers' compensation benefits would be terminated after July 20, 2004, and that an overpayment of benefits had occurred as a result of the willful false statements.
- June 2004 - The injured employee requested an administrative hearing relating to the order denying further benefits and the order for repayment.
- January 2006 - The administrative law judge submitted the initial recommended findings of fact, conclusions of law, and order indicating although the greater weight of the evidence of record shows the injured employee willfully made false statements to secure payment of benefits and willfully misrepresented his medical condition within the meaning of NDCC Section 65-05-03, there was insufficient evidence to establish that any false statement or misrepresentation was material so as to either cause WSI to pay the injured employee any workers' compensation benefits in error, or such as could have mislead WSI for a determination of his claim for workers' compensation benefits, and, accordingly, the order denying further benefits and order for repayment issued in March 2004 by WSI was vacated and set aside.
- August 2006 - The administrative law judge submitted additional recommended findings of fact and conclusions of law stating the greater weight of the evidence of record shows the injured employee willfully and intentionally made false statements to a doctor concerning his ability to work and misrepresented his physical ability in that respect for the purpose of influencing the doctor in the evaluation of his physical condition. Therefore, the recommendation was that the order dated March 2004, forfeiting all additional workers' compensation benefits to which he may be entitled after January 20, 2004, be affirmed. However, the recommended order provided because there was insufficient evidence showing that any false statement or misrepresentation was sufficiently material to cause WSI to pay the injured employee any workers' compensation benefits in error, WSI's order issued in March 2004 for repayment was vacated and set aside. Workforce Safety and Insurance adopted the recommended findings of fact and conclusions of law as recommended by the administrative law judge. The administrative decision became final.

Issues for Review

The workers' compensation issues raised by the injured employee included:

- The injured employee received improper treatment for his work injury and WSI never acknowledged the resulting arachnoiditis and how it exacerbated his spinal injury.
- The fraud statutes and the way they are implemented do not allow the injured employee to cross-examine the accuser. When an injured employee is faced with fraud charges, there is no meaningful way to fight these accusations.
- The state's workers' compensation system takes too long to reach decisions and resolve disputes, resulting in the injured employee incurring severe financial hardships.
- The state's workers' compensation system denies the injured employee's due process. In the case of this injured employee, his due process rights were violated in that he was unable to afford the costs associated with getting the correct specialist to his hearings, his mail was stolen, and his records were withheld by WSI.
- Workforce Safety and Insurance should have brought a civil action against the injured employee's medical provider for the medical malpractice committed.
- To provide more accountability for the state's workers' compensation system, WSI and medical providers should be penalized when they act improperly.
- An injured employee should be able to claim and establish fraud committed by WSI.

Workforce Safety and Insurance Response

The WSI representative reviewed the statutory time requirements for administrative appeals. An appeal must be filed within 30 days after notice of an order is issued.

The WSI representative reviewed the two levels of the state's workers' compensation law fraud standard. The first level is the determination of whether benefits were paid in error based on a false statement, and, if this is found, WSI is allowed to recover benefits. The second level is when it is determined there was a false statement that could have resulted in payments of benefits in error, upon which WSI is allowed to terminate future benefits but not recover past benefits.

In the case of this injured employee, WSI initiated a fraud investigation upon receipt of a tip. Workforce Safety and Insurance has video evidence of several instances of the injured employee participating in activities significantly deviating from the injured employee's medical limitations as well as exceeding his own reported limitations. Generally, WSI acts on fraud tips based on credibility and oftentimes these tips do result in investigations. In the case of the fraud investigation on this injured employee, WSI contracted with a private investigator and to that extent the investigator was acting as WSI's agent. Due to geographical limitations, WSI does contract for some investigation services.

The WSI representative testified that as it relates to the issue of whether WSI considered the injured employee's condition, the administrative hearing record reflects the issue of arachnoiditis was considered by the administrative law judge, and the transcript of the administrative hearing indicates there was an opportunity for cross-examination by the injured employee's attorney. Ultimately, the administrative law judge determined it was not necessary to diagnose arachnoiditis but did recognize the associated symptoms in reaching a recommended decision.

Fifth Claim

Claim Summary

The following is a chronology of events of the injured employee's claim:

- December 1999 - The injured employee sustained a bilateral wrist injury while working for a convenience store. Workforce Safety and Insurance accepted liability for the work-related injury and paid the associated medical expenses and disability benefits. The injured employee returned to work.
- June 2001 - The injured employee filed a reapplication for benefits, indicating he was no longer able to work due to ongoing pain and discomfort. Workforce Safety and Insurance found him eligible for wage-loss benefits and the injured employee was paid TTD benefits from June 21, 2001, through April 11, 2006, at which time he was declared PTD.
- February 2008 - Permanent total disability benefits ceased under the retirement presumption law when the injured employee reached the age of 65 years and 10 months and therefore became eligible for Social Security retirement benefits. Upon cessation of the PTD benefits, the injured employee became eligible to receive the additional benefit payable.

Issues for Review

The primary workers' compensation issues raised by the injured employee related to the retirement presumption and additional benefit payable law under NDCC Sections 65-05-09.3 and 65-05-09.4. The injured employee reported the reduction in his WSI benefits in the amount of $400 per month caused severe financial hardship in his household, including the possible loss of his home. He testified that but for the work injury, not only would his quality of life be better, but he would have continued working past the age of retirement and would have been able to vest in his employer's retirement plan.

The injured employee suggested WSI implement a procedure by which WSI perform a case-by-case review of each claimant impacted by the retirement presumption to determine whether it would be appropriate for the injured employee to receive an extension of WSI benefits until the age of 70, in order to accommodate each injured employee's individual financial situation.

Workforce Safety and Insurance Response

The WSI representative reviewed the workers' compensation benefit system and retirement presumption. Approximately 50 percent of the states' workers' compensation systems have some sort of retirement presumption. Under the North Dakota workers' compensation system, an injured employee may receive TPD benefits when the injured employee is able to return to work at a lesser capacity; TTD benefits when the injured employee is unable to return to work at that time in any capacity; and PTD benefits when the injured employee is never able to return to work in any capacity. There is a cost-of-living adjustment available for recipients of PTD but not for TTD or TPD benefits.

The WSI representative reviewed the additional benefit payable system. An additional benefit payable is not intended to be a retirement payment but is intended to address an injured employee's lower Social Security contribution due to workplace injury.

Comments by Interested Persons

A representative of CARE disagreed with the statement the state's workers' compensation system is not meant to be a retirement system. When the state's workers' compensation system was initially created, the system was supposed to allow an injured employee to receive benefits for life, but in 1995 the law changed. The representative testified in support of returning the law to the pre-1995 status.

Sixth Claim

Claim Summary

The following is a chronology of events of the injured employee's claim:

- June 2005 - The injured employee sustained an injury to his facial bones and mouth and WSI accepted the claim and paid benefits accordingly.
- January 2008 - The injured employee underwent a permanent partial impairment (PPI) evaluation by a Fargo doctor.
- February 2008 - Workforce Safety and Insurance issued an order denying PPI benefits because the impairment was less than 16 percent whole body. The order became final.

Issues for Review

The injured employee raised the following workers' compensation issues:

- The state's workers' compensation PPI law--NDCC Section 65-05-12.2--should be

changed. It is wrong for the law to provide a 15 percent whole body deductible for PPI awards. The PPI evaluation system makes it very difficult for the injured employee to get a second opinion on a PPI evaluation determination due to the limited number of medical professionals who are qualified to make these determinations.

- The state's workers' compensation law negatively impacts the injured employee by prohibiting the injured employee from hiring an attorney on a contingency basis. Attorneys are reluctant to take WSI clients due to the statutory low rate of reimbursement.
- The state's workers' compensation law penalizes the injured employee by providing a statute of limitation on the submission of mileage and expense claims. The claims analyst never walked the injured employee through the process or mentioned reimbursement, even when realizing his file lacked any claims submitted for reimbursement.
- Workforce Safety and Insurance is not forthcoming in providing injured employees with requested information. When the injured employee contacted WSI to request the list of medical providers qualified to perform visual PPI evaluations, WSI was very reluctant to provide the list to him. Workforce Safety and Insurance provided the list only after the injured employee told WSI that the administrative law judge said WSI should be able to provide this list.

Workforce Safety and Insurance Response

The WSI representative testified regarding the issues of PPI, attorney's fees, and the statute of limitations for submitting expenses. North Dakota's PPI system is unique in that it is not based on the earnings of the injured employee. In determining the amount of an injured employee's PPI, WSI uses the American Medical Association (AMA) guide for rating impairments and also uses a statutory schedule of injuries.

The WSI representative reported PPI is intended to measure the residual impairment following an injury. Each body part has a separate rating. Additionally, WSI has an internal audit of each PPI award to make sure the evaluating medical provider followed the AMA guide. The reality is there are very few medical providers in the United States certified to perform PPI evaluations in accordance with North Dakota's system.

The WSI representative testified that in determining an injured employee's PPI, it is important to recognize that the actual amputation of an eye differs from an injury to an eye. Amputations are scheduled injuries and differ from the AMA guide. In the case of an amputation of an eye, there is a PPI award of approximately $33,000.

The WSI representative testified that, historically, WSI has been fairly successful in defending PPI determinations. For an injured employee to overcome a PPI determination, it essentially requires a showing that the test was done improperly. Workforce Safety and Insurance tries to find medical providers in North Dakota who are willing to perform PPI evaluations and WSI has affirmatively cultivated these relationships in order to have qualified evaluators in this state.

The WSI representative reported NDCC Section 65-02-08 addresses attorney's fees. The law is designed to attempt to prohibit attorneys from double-dipping and being paid by the client as well as by WSI. In 2000 the Supreme Court decision in *Ash v. Traynor* clarified an injured employee may enter a fee arrangement with a private attorney, as long as there is no double-dipping.

The WSI representative testified that as it relates to the one-year statute of limitation for submitting reimbursement for mileage and expense claims, the information is in pamphlets provided to injured employees, and to the extent a claims analyst fails to periodically review the status of reimbursement claims, the review is something that should be done. A valid reason for having a statute of limitation is because it would become an administrative nightmare for a claims analyst to have an unlimited amount of time for which to go back and address reimbursements.

The WSI representative testified WSI does not have the flexibility to overlook the one-year statute of limitation related to reimbursement for mileage and other expense claims.

Comments by Interested Persons

A representative of CARE testified in support of removing the 15 percent whole body impairment not covered by PPI. If an injured employee is determined to have a 1 percent impairment, that injured employee should receive that award. In 1995 state law was changed because WSI was in financial trouble and requested that everyone help just a little bit to help the agency become financially stable. Workforce Safety and Insurance is now in good financial shape so it is time for WSI to help the injured employee.

A representative of the North Dakota Injured Workers Support Group testified from the perception of some injured employees there is a sense that claims analysts are not always working for the injured employee. Additionally, there is a significant amount of paperwork that injured employees have to deal with, and it is not surprising that information can be overlooked when it is provided to the injured employee in a paper format.

A representative of the North Dakota Injured Workers Support Group testified the North Dakota workers' compensation system is designed so the injured employee has a significant burden. He testified in support of shifting this burden to more evenly distribute the burden between WSI and the injured employee. Additionally, loss of vision is a unique impairment and the law should reflect this. Finally, he testified that the PPI threshold of 16 percent is inappropriate and he testified in support of changing this portion of the PPI law.

Seventh Claim

Claim Summary

The following is a chronology of events of the injured employee's claim:

- January 1996 - The injured employee filed an application for workers' compensation benefits for a bilateral wrist injury (carpel tunnel syndrome). Workforce Safety and Insurance accepted liability and paid the associated medical expenses and disability benefits.
- The injured employee received benefits for several years while undergoing treatment for this initial injury. During this treatment the injured employee contracted reflex sympathetic dystrophy (RSD) in her left arm. As part of the RSD treatment, the injured employee had a nerve stimulator surgically implanted in her left shoulder. After having the stimulator implanted, the injured employee contracted methicillin-resistant staphylococcus aureus (MRSA).
- August 2006 - Workforce Safety and Insurance issued an order denying further disability and vocational rehabilitation benefits. The injured employee was released to return to sedentary-level work, 8 hours per day, 40 hours per week. Workforce Safety and Insurance determined the injured employee was capable of pursuing employment as a social services aid, telemarketer, or collection clerk. As a result of her transferable skills, WSI found the injured employee was not entitled to TPD benefits.
- November 2006 - The injured employee requested an administrative hearing relating to the August 2006 order.
- August 2007 - The administrative law judge issued the recommended findings of fact, conclusions of law, and order finding the injured employee had not shown that her MRSA was causally related to her work injury and therefore may not have the MRSA considered in her rehabilitation assessment. The WSI order denying further disability and vocational rehabilitation benefits dated August 2006 was affirmed. Workforce Safety and Insurance adopted the recommended findings of fact, conclusions of law, and order. The order became final.

Issues for Review

The workers' compensation issues raised by the injured employee included:

- Due to her inability to be employed, WSI should award the injured employee full disability benefits.
- Workforce Safety and Insurance should accept liability for the injured employee's MRSA.
- Workforce Safety and Insurance rehabilitation services are not adequate.
- Injured employees are unable to afford legal services to pursue unjust WSI orders.
- WSI has repeatedly disregarded the injured employee's primary doctor's position that she is unable to do repetitive work.

In support of these issues the injured employee provided the following information:

- The injured employee testified WSI ceased using a rehabilitation service called the Expedited Program, which was very effective. The Expedited Program allowed an injured employee to do telephone work from home and allowed the injured employee to work for 15 minutes and then take a 15-minute break.
- The MRSA was directly related to the injured employee's medical treatment for her work injury. The injured employee testified that approximately one month after having surgery for the insertion of the stimulator she began getting skin sores that progressively got worse.
- Medical reports supported the position the injured employee was unable to work. The administrative law judge found a doctor noted the injured employee's chronic pain was secondary to her RSD and was increasing in intensity and significantly diminished her functional capacity, ultimately resulting in the doctor advising WSI that the doctor felt the injured employee could not work given her skin condition and pain level.

Workforce Safety and Insurance Response

The WSI representative focused her testimony on the issues of the nexus between the injury and acquiring MRSA and on the appropriateness of WSI's vocational rehabilitation plan. The administrative law judge relied on medical testimony indicating there were a significant number of potential causes for contracting MRSA in making a finding there was no nexus between the work injury and the contraction of MRSA.

The WSI representative testified as it relates to the issue of coverage for MRSA, an injured employee has the burden to prove entitlement for benefits. The injured employee needs to prove that it is more likely than not the injury was work-related.

The WSI representative testified the injured employee's FCE found the injured employee was eligible for full-time sedentary employment, and the injured employee's primary care doctor signed off on the FCE. Ultimately, the FCE became the basis for the administrative law judge's order.

Eighth Claim

Claim Summary

The following is a chronology of events of the injured employee's claim:

- December 1993 - The injured employee sustained an injury to her left hand and bilateral knees while employed as a nurse. Workforce Safety and Insurance accepted liability for this claim and paid the associated medical expenses. The injured employee returned to work.
- August 1997 - Workforce Safety and Insurance issued an order denying specific benefits finding the injured employee had not proven with reasonable medical certainty that her recent medical conditions of left carpal tunnel syndrome and fibromyalgia were caused by her December 1993 work injury.
- September 1998 - Workforce Safety and Insurance issued an order denying specific benefits indicating the injured employee had not proven with reasonable medical certainty that her

psychological problems and depression were caused by the December 1993 work injury.

- December 1998 - Workforce Safety and Insurance issued an amended order denying specific benefits and an order denying disability benefits. The order indicated the injured employee had not proven with reasonable medical certainty that her psychological problems and depression were caused by the December 1993 work injury and the injured employee was not entitled to the payment of medical expenses for specific prescription medications.
- August 1999 - An administrative hearing was conducted covering three areas of concern. First, the administrative hearing addressed the order issued in August 1997 denying benefits for the medical conditions of carpal tunnel syndrome and fibromyalgia; second, the hearing addressed the order issued in September 1998 denying payment of medical expenses for specified prescriptions for the treatment of psychological problems and depression; and third, the hearing addressed the amended order denying specific benefits and the order denying disability benefits issued in December 1998, which denied benefits for the treatment of psychological problems and depression.
- September 1999 - The administrative law judge issued the recommended findings of fact, conclusions of law, and order affirming the WSI orders. Workforce Safety and Insurance adopted these recommendations.
- December 1999 - The injured employee filed an appeal to district court, and in February 2000 the district court judge issued an order of dismissal stating the case was dismissed with prejudice and without any cost to either party. The district court order was based on a stipulation signed by the injured employee.

Issues for Review

The workers' compensation issues raised by the injured employee included:

- Workforce Safety and Insurance sided with the employer regarding the injured employee's termination as a licensed practical nurse.
- Not all of the issues and facts relating to the injured employee's situation were considered by WSI. There was a miscommunication between the injured employee, the doctor, and the employer resulting in the loss of opportunity to receive disability benefits from WSI. Because the system is so complicated, WSI should be more understanding in dealing with miscommunications.
- The state's workers' compensation system is very complicated. The injured employee was alone on the journey.

Workforce Safety and Insurance Response

The WSI representative testified a review of the injured employee's medical records indicated the injured employee previously had received treatment for this psychiatric condition going back to 1991. In making a determination of coverage, WSI found no nexus between the injured employee's workplace fall and her psychiatric condition.

The WSI representative stated under North Dakota's workers' compensation laws, a psychological injury is compensable if the condition is caused by physical injury but only if the physical injury is at least 50 percent of the cause of the psychological injury. Although the evaluation for coverage of a psychological injury can become grey, there are instances of WSI covering a psychological injury.

Comments by Interested Persons

Representative Karen Karls testified she has known the injured employee for months, and at the injured employee's request she reviewed the injured employee's WSI records. She testified she knows the injured employee is trying very hard to keep her head above water. Although it is possible the injured employee received bad legal advice, it needs to be recognized that the workers' compensation system is a very complex system for a layperson to understand.

Ninth Claim

Claim Summary

The following is a chronology of events of the injured employee's claim:

- January 2008 - The injured employee sustained a work-related injury. The injury occurred while the injured employee was taking out the garbage and the wind caught the steel door and hit her in the face. Workforce Safety and Insurance accepted liability for the injury and paid the associated benefits.
- May 2008 - Workforce Safety and Insurance issued an order denying payment for the replacement of the injured employee's lenses to her eyeglasses, claiming WSI was not responsible for the injured employee's eyeglasses because there was no actual eye injury causing a change in the injured employee's sight attributable to the work injury.

Issues for Review

The workers' compensation law should provide coverage for eyeglasses damaged in the course of a workplace injury. Workforce Safety and Insurance requires a physical injury to the eye before it will pay for a replacement of broken eyeglasses. Workforce Safety and Insurance's denial is in part based upon the assertion that her eyeglasses are "part of her wardrobe." Without her eyeglasses, the injured employee would be unable to drive and unable to perform her job duties.

Workforce Safety and Insurance Response

The WSI representative reviewed the law addressing compensable injury and artificial members. North Dakota Century Code Section 65-01-02(10) defines compensable injury and Section 65-01-02(3) defines artificial members. The most recent legislative history on the definition of artificial members goes back to 1987, at

which time it appears the definition was amended to clarify how WSI was addressing compensation for artificial members.

The statutory language defining artificial members originally goes back to 1941. In 1941 the law stated an artificial member includes any such devices as are substitutes for, and not mere aids to, a natural body part, organ, limb, or other part of the body. From approximately 1943 to 1947 the law stated dentures were not covered as an artificial member.

Tenth Claim

Claim Summary

The following is a chronology of events of the injured employee's claim:

- February 2003 - The injured employee sustained an injury to his neck while working as an assembler. Workforce Safety and Insurance accepted the claim and benefits were paid accordingly.
- May 2003 - The injured employee was diagnosed with a C4-5 herniated disk and severe C5-6 spondylosis with neck and bilateral arm pain. In October 2003 the injured employee was further diagnosed with a C3-4 spondylosis with axial neck pain.
- November 2005 - The FCE indicated the injured employee was able to be employed six hours per day as a telephone solicitor/telemarketer.
- December 2005 - Workforce Safety and Insurance issued an order awarding TPD benefits indicating the injured employee was capable of gainful employment as a telephone solicitor/telemarketer.
- February 2006 - The injured employee requested an administrative hearing relating to WSI's order awarding TPD benefits.
- December 2006 - The administrative law judge issued the recommended findings of fact, conclusions of law, and order providing the greater weight of the evidence established by expert vocational evidence was the injured employee had a retained earning capacity, demonstrated by the injured employee's ability to work as a telephone solicitor in a statewide job pool; there was no disagreement about the injured employee's physical restrictions, the only disagreement concerned the doctor's disbelief that a telephone solicitor can accommodate the injured employee's restrictions. The administrative law judge affirmed the WSI order awarding TPD. Workforce Safety and Insurance adopted the recommended findings of fact, conclusions of law, and order. The order became final.
- April 2006 - Workforce Safety and Insurance issued a notice of intention to discontinue TPD benefits as the injured employee failed to comply with the program of rehabilitation by performing a good-faith job search. The notice further indicated a good-faith job search includes making at least five job contacts per day. Contacts can include visits to Job Service North Dakota, Internet resources, or other employment agencies.
- May 2006 - The injured employee requested reconsideration of WSI's April 2006 informal decision.
- July 2006 - Workforce Safety and Insurance issued an order suspending TPD benefits and an order denying reapplication.
- January 2007 - An administrative hearing was conducted regarding the July 2006 order.
- February 2007 - The administrative law judge issued the recommended findings of fact, conclusions of law, and order affirming WSI's July 2006 order suspending TPD benefits and the order denying reapplication, except to the extent that it requires the injured employee to come back into compliance with vocational rehabilitation by registering with Job Service North Dakota and the preferred worker program, contacting five employers per day, and submitting an employment search log every month. Rather, in order for the injured employee to come back into compliance with vocational rehabilitation, he must make a good-faith work search and return to work utilizing his transferable skills. Workforce Safety and Insurance adopted the recommended findings of fact, conclusions of law, and order. The order became final.
- September 2007 - Workforce Safety and Insurance issued an order denying liability for the injured employee's depression claiming the psychological condition did not arise out of the compensable work injury.
- February 2008 - The administrative hearing was conducted relating to WSI's September 2007 order.
- March 2008 - The administrative law judge issued her recommended findings of fact, conclusions of law, and order finding the greater weight of the evidence showed the injured employee suffers depression caused by his physical injuries and that the work injuries are at least 50 percent of the cause of the condition as compared to all other contributing causes, reversing WSI's order denying benefits. Workforce Safety and Insurance adopted the recommended findings of fact, conclusions of law, and order.
- June 2008 - The injured employee was seen by his psychiatrist who stated "the patient's followup on major depression and irritability, chronic pain in neck, shoulder, and back secondary to a work-related injury. His status is post three neck surgeries and two shoulder surgeries related to that injury." The psychiatrist further stated "he is receiving no benefits from workers' compensation mainly because they contend that he did not try to look for a job, which meant five contacts a day or he worked as a telemarketer. This is a shame because the last job the patient should ever think of having would be a telemarketer. I think it would be a disaster for whatever company he was working for because of the way his personality is

put together and because of irritability related to pain. Why he is not getting benefits considering all that he has gone through, I do not understand."

- September 2008 - Workforce Safety and Insurance awarded PPI benefits in the amount of 55 percent whole body impairment for cervical spine and bilateral shoulders.

Issues for Review

The workers' compensation issues raised by the injured employee included:

- Workforce Safety and Insurance should be required to document vocational rehabilitation results. It was suggested WSI contact every injured employee six months after a vocational rehabilitation plan becomes final and, if the injured employee remains unemployed despite a good-faith job search, recommence disability benefits and reevaluate vocational rehabilitation possibilities. Employers, employees, and the public deserve to know if WSI's rehabilitation efforts are actually working.
- Workforce Safety and Insurance should exercise some common sense presumptions. Workforce Safety and Insurance often seems to ignore the reality in which injured employees live. For example, WSI rehabilitation service providers inform injured employees to tell employers about the injured employees' injuries and limitations; however, the reality is that if an injured employee informs the potential employer about the limitations, 99 percent of those potential employers will not hire the injured employee.
- Workforce Safety and Insurance should be redirected to use the same standards employed by Job Service North Dakota regarding what constitutes a good-faith job search. Workforce Safety and Insurance should use the same standards used by the Department of Human Services Division of Vocational Rehabilitation. Finally, WSI should use the standards adopted by the Social Security Administration for determining the weight of a treating doctor's opinion and the realistic possibility of employment in the appropriate labor market.
- Eliminate WSI's unfettered discretion in exercising its continuing jurisdiction. If an injured employee can show relevant new facts, which either did not exist or were overlooked previously, WSI should be required to consider the facts and issue an appealable decision. Workforce Safety and Insurance historically only uses its continuing jurisdiction to decrease an injured employee's benefits. The injured employee intended to apply for WSI's continuing jurisdiction project and not for review of his claim by the Workers' Compensation Review Committee; however, he inadvertently completed the wrong form and WSI would not accept his application. The injured employee testified WSI has continuing jurisdiction at all times and does not need an injured employee to submit an application by an arbitrary deadline.
- Once a workers' compensation claim is accepted, WSI should continue disability and medical benefits until a subsequent order reducing or terminating such benefits becomes final. Do not starve an injured employee or prevent the injured employee from obtaining medically necessary treatment until WSI's order becomes final.
- Eliminate the 20 percent attorney's fee cap. Removal of the cap will allow an injured employee to challenge decisions that are not cost-effective to pursue under the current system, such as denials of MRIs and other necessary medical tests and treatment, and allow an injured employee to challenge violations of due process, such as ex parte communications between WSI's counsel and WSI's decisionmakers. If the attorney's fee cap is removed from law, it is possible there would be an increase in the number of attorneys willing to represent injured employees. If WSI's attorneys had the same limitations as the injured employees' attorneys, WSI would not be able to find attorneys willing to contract for services.
- Workforce Safety and Insurance should adopt a treating doctor presumption much like the Social Security Administration has.

Workforce Safety and Insurance Response

The WSI representative reviewed the vocational rehabilitation hierarchy established under NDCC Section 65-05.1-01. The WSI job contact requirements are very lenient, as an injured employee can comply with the job search requirements in a variety of ways, including looking at a newspaper or searching the Internet. Workforce Safety and Insurance would not take the issue of noncompliance to a hearing if the injured employee were partially following the job search requirements as long as the injured employee had an honest intention to find employment.

The WSI representative testified that in the case of the injured employee, over a five-month period the injured employee made seven contacts. The injured employee did not make an honest attempt to find work.

The WSI representative testified the injured employee was found to be capable of being a telemarketer. In making this determination, depression was considered in the evaluation of the injured employee's ability to work. The mere fact that depression existed in this case was determined not to prohibit the injured employee from working.

The WSI representative testified that, generally, WSI does not go backwards to consider a change in earlier rulings, unless there is a substantial change in an underlying condition, because there needs to be some level of finality. In the case of the injured employee, two years down the line WSI did not reopen or revisit its earlier decision because the initial determinations did consider depression and found that it was not debilitating. However, it is possible that over a course of two years the injured employee's depression progressed and became worse. Additionally, although WSI has the authority to go back and recoup benefits mistakenly

given for a preexisting condition, WSI typically does not go back to recoup these expenses.

The WSI representative stated that in the case of this injured employee, WSI has not gone back to reevaluate an earlier determination and has not fully evaluated this new evidence. There is no significant value in WSI considering this new evidence because there is little chance new evidence would change the posture of the injured employee's case.

The WSI representative reported that until legislation was enacted in 1997, the North Dakota Supreme Court had directed that all workers' compensation law be read using liberal construction. Under liberal construction the law was read to resolve all reasonable doubts in favor of the injured employee. Liberal construction was used because the workers' compensation law was intended to be remedial. In 1997 the law was changed to even the playing field so the law was not interpreted in favor of one party over another.

The WSI representative testified WSI's job is to determine, based on a statewide job pool, whether there are jobs available for the injured employee. If the Legislative Assembly would find that rural injured employees are not capable of finding jobs in the area, the rural claimants would essentially be excused from finding jobs. A change like this could have far-reaching consequences.

Before July 1, 2008, the Legislative Council office received the injured employee's application for review by the Workers' Compensation Review Committee. The injured employee was contacted to make arrangements to schedule a time for the committee review. It was at this point it became clear the injured employee's intent was to have filed for WSI's continuing jurisdiction program instead of Workers' Compensation Review Committee claim review. As a courtesy to the injured employee the Legislative Council staff contacted WSI and explained the situation to see if WSI would be willing to accept the Workers' Compensation Review Committee application as an application for the continuing jurisdiction program. Workforce Safety and Insurance declined to accept the application for the continuing jurisdiction, and as such the injured employee agreed to appear before the committee to present his claim.

The WSI representative testified that in designing the WSI continuing jurisdiction program parameters, including timelines, initially WSI guaranteed a review of 250 injured employees and set up a cutoff date of July 1, 2008. Workforce Safety and Insurance actually received 425 applications by the cutoff date. Workforce Safety and Insurance has agreed to consider all 425 applications. It would be a slippery slope for WSI to recognize exceptions for some applicants and not for others.

Comments by Interested Persons

The committee received testimony from an injured employee who questioned why WSI refused to exercise its continuing jurisdiction to review this injured employee's claim. The cost of paying for this injured employee's benefits would be minor compared to the cost of defending WSI's position and conducting another administrative hearing.

A representative of CARE testified in support of a change in the law to provide if substantial additional evidence is found, WSI would be required to exercise continuing jurisdiction.

A representative of the North Dakota Motor Carriers Association testified that as it relates to attorney's fees, the committee should recognize that employers also incur attorney's fees in WSI cases.

Eleventh Claim

Claim Summary

The following is a chronology of events of the injured employee's claim:

- January 1996 - The injured employee sustained a work injury to her back. Workforce Safety and Insurance accepted liability of this injury and awarded payment of the associated benefits.
- February 2005 - Workforce Safety and Insurance issued a notice of intention to discontinue benefits for noncompliance with vocational rehabilitation. The injured employee did not experience a lapse in disability benefits as she came back into compliance before the discontinuation date.
- The injured employee appealed the February 2005 order to the district court. The district court affirmed the WSI order.
- April 2005 - Concurrent with the February 2005 order for noncompliance with vocational rehabilitation, WSI issued a notice of intention to discontinue TTD benefits, noting the injured employee's vocational rehabilitation plan had been approved. The notice indicated the injured employee had transferrable skills to return to work as a customer service representative, collector, and administrative assistant.
- June 2005 - Workforce Safety and Insurance issued an order awarding TPD benefits indicating the injured employee was capable of gainful employment.
- June 2006 - Workforce Safety and Insurance issued a notice of intention to discontinue TPD benefits, based on the injured employee's failure to participate in job search activities. The injured employee appealed the notice and submitted a letter requesting further consideration pertaining to that decision.
- August 2006 - Workforce Safety and Insurance issued an order discontinuing TPD benefits. The order indicated the injured employee was found to be engaged in a second instance of noncompliance for failure to comply with job search activities.
- September 2006 - The injured employee requested a hearing pertaining to the August 2006 order.
- February 2008 - The administrative hearing was held addressing the issue of whether the injured employee had engaged in a second instance of noncompliance without good cause. The

administrative law judge submitted the recommended findings of fact, conclusion of law, and order recommending WSI's order discontinuing TPD benefits be affirmed. Workforce Safety and Insurance adopted the recommendations of the administrative law judge and the order became final.

Issues for Review

The workers' compensation issues raised by the injured employee included:

- Workforce Safety and Insurance does not provide adequate job-seeking assistance to injured employees. Workforce Safety and Insurance sets up roadblocks to interfere with the injured employee complying with WSI's rehabilitation requirements, such as requiring an injured employee to get a doctor's note when classes are missed on account of illness, disregarding occasional medical limitations that may prevent job-seeking activities, providing inadequate retraining, and failing to provide the injured employee with requested assistance in performing job-seeking activities. Workforce Safety and Insurance and Job Service North Dakota do not coordinate services.
- Workforce Safety and Insurance seems to focus on a single event of noncompliance instead of acknowledging the pattern of compliance. Workforce Safety and Insurance's claim of noncompliance focuses on one day of missed classes, but WSI does not recognize the pattern of attending all of the other classes.
- The injured employee has inadequate resources in navigating the state's workers' compensation system. The injured employee was unhappy with the services she received at OIR and she was unhappy with her experience at the administrative hearing. Throughout the whole system it was the injured employee's perception WSI had an unlimited number of people at its disposal, such as claims analysts, OIR, administrative hearing officers, and doctors, whereas the injured employee was left without any help.
- Workforce Safety and Insurance does not support the injured employee's treating doctors. Over the course of her treatment she found 13 doctors who were willing to support her and her limitations; however, WSI regularly limited the injured employee's treating doctor. For example, the injured employee testified she spent thousands of dollars to get an accurate diagnosis, but then WSI hired its own doctor to do an IME and after a 15-minute evaluation found the injured employee was able to be employed full-time. In the injured employee's case it took a long time to receive a final diagnosis of avascular necrosis, and as a result of not finding this diagnosis sooner, the condition progressed to the point it will ultimately lead to her death.
- The state's workers' compensation system is failing the injured employee. As a result of her workplace injury and the ongoing problems, she became depressed and suicidal. She knows several injured employees who actually committed suicide due to their depressing situations.

Workforce Safety and Insurance Response

The WSI representative testified the injured employee's vocational plan required her to perform a good-faith work search in order to return to work in the local job pool. Workforce Safety and Insurance has a two strike for noncompliance policy. In the first case the injured employee failed to comply with her vocational rehabilitation plan by having an unexcused absence from her training program. An injured employee is allowed to miss training if there is a doctor's excuse.

The WSI representative testified the record seems to reflect a tug-of-war between the injured employee and the vocational rehabilitation service providers. When a tug-of-war situation arises, it is typically in the vocational rehabilitation arena.

The WSI representative stated that WSI struggles with how best to get an injured employee to comply with certain requirements. There are choices ranging from using a carrot and using a stick. North Dakota's vocational rehabilitation services are beyond those services other states' workers' compensation systems use. However, getting a job is difficult and there is no easy answer.

Twelfth Claim

Claim Summary

The following is a chronology of some of the events of the injured employee's claim:

- November 1997 - The injured employee sustained a work-related injury to his chest and neck. Workforce Safety and Insurance accepted liability in this claim and paid the associated medical expenses and disability benefits.
- April 1998 - The injured employee underwent an interior C6-7 fusion.
- February 2003 - Workforce Safety and Insurance awarded a PPI award in the amount of 28 percent whole body for cervical spine in the amount of $6,520.
- October 2006 - Workforce Safety and Insurance issued an order denying further disability and vocational rehabilitation benefits, indicating the injured employee was capable of performing gainful employment as a customer service representative or motor vehicle dispatcher.
- May 2007 - An administrative hearing was conducted. The recommended findings of fact, conclusion of law, and order recognized there were several conflicting medical opinions. It was found the treating physicians were in a better position to review and understand medical records that they themselves created than were the other doctors; therefore, it was found WSI had not shown by a preponderance of evidence that return to an occupation within the local job pool was an appropriate vocational rehabilitation option for the injured employee. The recommended order

reversed the October 2006 order denying further disability and vocational rehabilitation benefits. Workforce Safety and Insurance adopted the recommended findings of fact, conclusion of law, and order.

- April 2008 - The injured employee had the plates at C6-7 removed and had an interior fusion of C5-6 and C4-5.
- May 2008 - A registered nurse at a clinic's neuroscience neurosurgery department reported the injured employee's surgeon opined the injured employee would not be capable of returning to work following his recovery from his surgery and will remain disabled.
- June 2008 - The injured employee's doctor opined it was unrealistic to believe the injured employee would ever return to gainful employment given his extensive cervical surgery and the chronicity of his radiculopathy. The doctor indicated the injured employee should not be considered for any type of vocational activity or return to work activity until at least three months to six months post surgery, and, even then, it is unlikely that he would be a candidate for any such services or activities.

Issues for Review

The workers' compensation issues raised by the injured employee included:

- While faced with struggling day-to-day to make ends meet, the injured employee is constantly haunted by fears his WSI benefits could end at any time.
- The state's workers' compensation system seems to be biased against the injured employee. The injured employee reported he feels as if WSI is constantly seeking ways to deny his eligibility status. On several occasions WSI doctors' opinions have been used to dismiss the validity of objective findings submitted by the injured employee's doctors. WSI, in seeking to reduce caseloads and expenditures, is overreliant on the biased opinions of health care providers affiliated with WSI, resulting in unnecessary financial and health burdens on individuals and families.
- The WSI appeal process takes far too long. An investigation and appeal should be resolved within three months. In the case of the injured employee's claim, a fraud appeal took one year. One year is far too long for a family to go without money. In addition to the length of time to appeal a WSI decision, the cost of legal representation is an unfair burden on the injured employee. Additionally, once the injured employee was cleared of the fraud charges, the employer's representative who made false accusations was never charged with fraud or otherwise penalized.

In order to address some of the workers' compensation issues raised, the injured employee recommended the following:

- Appoint qualified, external evaluators to evaluate WSI's current policies and eligibility requirements. Evaluators might focus on and target the specific wording of policies that are unclear and easy to manipulate by supervisors and other decisionmakers.
- Provide sensitivity training to WSI managers and claims analysts, with a strong emphasis on ways to reduce conflicts of interest and raise ethical awareness.
- Establish a board to review WSI claims that have been denied over the past five years.
- Find ways to facilitate, improve, and expedite the appeals process.
- Develop a questionnaire to obtain feedback from claimants regarding their satisfaction with WSI.

Workforce Safety and Insurance Response

The WSI representative testified the injured employee's claim was unique because as it progressed it became very complex. For example, at the outset there was a fraud claim that the injury was not work related. Once that issue was resolved, other issues continued to arise and needed to be dealt with, including instances of noncompliance with vocational rehabilitation and law enforcement issues.

The committee received information regarding the TTD law. For injuries occurring before January 1, 2006, there is no statutory limit on the length of time an injured employee may receive TTD. With the enactment of House Bill No. 1171 (2005), there is a two-year limit on receipt of TTD. Under the new system, there is a push to get TTD status reviewed timely to determine whether there is a need to convert the claim to PTD. Recipients of TTD are not eligible for supplemental benefits to recognize cost-of-living adjustments unless there is a change of status to PTD. For those injured employees who are covered under the old law, WSI is making a concerted effort to review these claims periodically.

The WSI representative testified WSI is working with North Dakota doctors to address their unwillingness to perform IMEs. Workforce Safety and Insurance is considering the possibility of implementing a three-member panel for IME review. In 2007 WSI performed 125 IMEs, of these IMEs some were limited to record reviews and some included physical examinations.

Comments by Interested Persons

A representative of the North Dakota Injured Workers Support Group testified the injured employee's claim raises some interesting and reoccurring issues, including:

- When there are false statements from an employer, the employer is not penalized;
- There was a claim of vocational rehabilitation noncompliance, which may or may not be substantiated;
- The IME is given more weight than the opinion of an injured employee's treating doctor; and
- Statutory limitations on TTD impact injured employees.

As the claims covered under House Bill No. 1171 are reaching the two-year limitation on the receipt of TTD, injured employees are beginning to receive notice of the

expiration of those two years and the resulting termination of benefits. It appears that some injured employees are not reaching maximum medical improvement within that two-year period and are being forced off the system.

A representative of the North Dakota Injured Workers Support Group testified that under North Dakota's workers' compensation law, physical laborers have problems with coverage of injuries that WSI regularly considers degenerative. It is common for WSI to fail to cover an injured employee because that deterioration or a degenerative condition is found to be a preexisting condition.

An injured employee testified as it relates to PPI, the current requirements of a 16 percent whole body impairment goes back to legislative changes made in 1989. In 1989 the testimony from WSI was that by adulthood most people have degenerative changes of approximately 16 percent. Although the 1989 PPI changes did increase benefits to catastrophically injured individuals, the law change negatively impacted injured employees who have less than 50 percent impairment.

An injured employee testified it is not uncommon for an injured employee who was seriously injured to experience depression and suicidal thoughts. It was requested the committee and WSI recognize that chronic pain frequently leads to depression.

Thirteenth Claim

Claim Summary

The following is a chronology of events of the injured employee's claim:

- August 2005 - The injured employee sustained an injury to his left ankle while working as a welder. Workforce Safety and Insurance accepted liability for this injury and paid the associated medical expenses and disability benefits.
- March 2006 - The injured employee underwent a triple arthrodesis to the left foot and ankle. In the course of this surgery, the injured employee was administered too much morphine and experienced complications relating to his lung.
- February 2007 - Workforce Safety and Insurance issued a notice of intention to discontinue wage loss benefits claiming the injured employee did not comply with the program of rehabilitation. The injured employee did not appeal and the notice became final.
- April 2007 - The injured employee was admitted to the hospital for treatment. The discharge diagnosis included atelectasis and evolving consolidation of the right mid and lower lobe, bilateral lower extremity cellulitis, hypoxemia secondary to atelectasis and evolving consolidation of right mid and lower lobe, hyponatremia, and pulmonary hypertension.
- May 2007 - Workforce Safety and Insurance issued a notice of decision denying benefits indicating WSI would not cover the bill for the April 2007 medical services because the inpatient stay was found to be unrelated to the work injury to the left ankle. The order became final.

Issues for Review

The primary workers' compensation issue raised by the injured employee was that WSI should cover the cost of the injured employee's oxygen because but for the foot and ankle surgery, the injured employee likely would not have incurred his lung problems. Additionally, the lung problem he is experiencing directly resulted from an overdose of morphine during his surgery; therefore, WSI should be covering all of the lung-related medical bills as well.

Workforce Safety and Insurance Response

The WSI representative reported that initially WSI covered the expenses for the injured employee's oxygen tanks. Workforce Safety and Insurance's computerized billing program for durable medical equipment provides that the program will automatically pay for claims of under $500. These payments are periodically reviewed and once the error was found, WSI stopped covering the oxygen tanks.

Fourteenth Claim

Claim Summary

The following is a chronology of events of the injured employee's claim:

- July 2006 - The injured employee sustained an injury to her right ankle. Workforce Safety and Insurance accepted her claim and benefits were paid accordingly.
- August 2006 - The injured employee underwent surgery for her fractured right ankle which included insertion of a plate and seven screws. The injured employee received wage-loss benefits from August 1, 2006, to December 21, 2006.
- Following surgery, the injured employee reported her condition deteriorated and her pain increased. She developed regional pain syndrome.
- November 17, 2006 - Workforce Safety and Insurance issued a notice informing the injured employee of her obligation to attend English as a second language (ESL) classes. This notice was written in English and was sent by certified mail. This initial notice was returned to sender because the injured employee did not pick up the letter at the post office.
- November 27, 2006 - Workforce Safety and Insurance issued a notice directing the injured employee attend ESL classes. This document was written in Spanish and sent by certified mail. This notice was returned to sender because the injured employee did not pick up the letter at the post office.
- November 30, 2006 - Workforce Safety and Insurance issued a notice to terminate TTD benefits. This notice was written in English and sent by regular mail.
- December 2006 - The injured employee sought the assistance of a medical provider to address the WSI notice to terminate benefits. The medical provider wrote a letter to WSI setting forth the reasons why the injured employee was unable to attend the ESL classes and why she was unable

to tolerate the physical therapy required by WSI. Workforce Safety and Insurance did not accept this letter as a request for appeal and therefore wage-loss benefits were terminated and the order became final.

Issues for Review

The workers' compensation issues raised by the injured employee included disagreement with WSI's termination of benefits. The injured employee reported the correct outcome or decision would be for WSI to pay her wage-loss benefits from the time they were terminated in December 2006 until the present. The injured employee's basis for this position was:

- There was a clear reason backed by a medical opinion as to why the injured employee was unable to comply with WSI's rehabilitation requirements of participating in physical therapy and attending ESL classes. The injured employee was experiencing excruciating pain, limiting her ability to participate in physical therapy as well as ESL classes. Additionally, the ESL class attendance requirement was questionable given the fact the injured employee is functionally illiterate and did not have a rehabilitation plan in place.
- The injured employee did not receive fair and objective medical treatment in the treatment of her WSI injury. Ultimately, the injured employee sought the assistance of a physician's assistant to provide medical treatment and to attempt to communicate with WSI.
- Workforce Safety and Insurance treated the injured employee in an unfair and adversarial manner resulting in a negative outcome with her eligibility for benefits and her family experiencing extreme hardship, including forcing her minor children to get jobs to support the family.
- There were language and communication problems throughout the claim process. The injured employee speaks Spanish as her primary language and understands very little English. Although WSI does not have an obligation to accommodate an injured employee whose primary language is not English, WSI does have interpretive services and should utilize those services and also should take the measures necessary to be consistent and should make sure important information is clearly conveyed.
- To give claims the appropriate consideration and treatment, WSI should limit its use of cost assessments of claims. The injured employee took the position that WSI made assumptions from the very beginning of her claim that she would recover by a certain date, regardless of the actual medical basis.
- Workforce Safety and Insurance inappropriately informed the injured employee of the 104-week limit to the receipt of TTD benefits by failing to discuss all of the injured employee's options and by failing to take into consideration the injured employee's injury-related limitations.
- Workforce Safety and Insurance failed to take the necessary measures to gather sufficient medical information or social information to understand the medical problems and social problems the injured employee was having and how they impacted the injured employee's ability to meet the physical therapy and ESL requirements. The record is clear the injured employee does not have a driver's license, does not know how to drive, is limited by language barriers, is functionally illiterate, and only has a sixth grade education.
- Workforce Safety and Insurance's use of a medical claims analyst became adversarial. The injured employee perceived the medical claims analyst played the role of trying to assess an injured employee's ability to return to work and this was typically done by committing the injured employee to hypotheticals posed to medical providers at medical appointments.
- Workforce Safety and Insurance erred in not accepting the injured employee's attempt to file an appeal. The injured employee testified that on receiving the notice to terminate benefits, the injured employee sought the assistance of a physician's assistant. The physician's assistant prepared and mailed a letter to WSI indicating the injured employee's inability to comply with ESL class attendance. Workforce Safety and Insurance received this letter within the period of appeal but did not accept this letter as a formal request for appeal. Although the request did not meet the letter of the law, it met the spirit of the law, especially given the injured employee was functionally illiterate and was unable to speak or write in English.

Workforce Safety and Insurance Response

The WSI representative testified the injured employee's claim posed significant challenges for the claims analyst and for WSI. Workforce Safety and Insurance quickly evaluated the injured employee's ability to return to work. Early on it was clear there were language barriers that needed to be addressed. In part because of these language barriers, WSI assigned a nurse case manager to assist the injured employee when attending medical appointments.

The WSI representative testified over the last four years WSI has begun the practice of using nurse case managers. This practice allows WSI to have someone present at a medical appointment to ask questions and to gather information regarding the injured employee's prognosis, whether there are return to work guidelines, and whether it is necessary for WSI to assist in coordinating medical care.

The WSI representative testified that WSI regularly uses occupation and disability guidelines to aid WSI in identifying which claims are not progressing as expected. It is very important for WSI to use these guidelines to help manage claims.

The WSI representative testified that under current law an injured employee is limited to a maximum of 104 weeks of receipt of TTD. It is very important to keep

injured employees informed and therefore it is appropriate for a claims analyst to inform an injured employee of the time limitations. The best outcomes result from prompt and thorough medical care and timely return to work.

Fifteenth Claim

Claim Summary

The following is a chronology of events of the injured employee's claim:

- October 2003 - The injured employee sustained a work injury to his right shoulder. Workforce Safety and Insurance accepted liability for this injury and awarded payments for the associated benefits.
- February 2005 - Workforce Safety and Insurance issued an order denying specific benefits relating to treatment for depression, anxiety, and any other psychological conditions.
- June 2005 - The Office of Independent Review issued a certificate of completion indicating no change to the order. The injured employee requested an administrative hearing relating to the February 2005 order.
- June 2005 - Workforce Safety and Insurance issued an order awarding rehabilitation benefits directing the injured employee to attend the college preparatory program at the State School of Science beginning June 7, 2005, through July 1, 2005, and to attend an architectural drafting and estimating program scheduled to begin on August 22, 2005. The injured employee requested reconsideration of the order awarding rehabilitation benefits indicating WSI did not consider his depression in developing the vocational rehabilitation plan and that he was not academically prepared to attend the training program identified by WSI.
- July 2005 - Workforce Safety and Insurance reinstated vocational services on the claim to determine the first appropriate rehabilitation option given the injured employee's desire not to proceed with the formal training program at the State School of Science.
- August 2005 - Workforce Safety and Insurance issued an order awarding TPD benefits. The following job goals were identified: complaint clerk, telephone solicitor, team assembler, and security guard.
- September 2005 - The injured employee requested an administrative hearing relating to the August 2005 order.
- November 2005 - The administrative hearing was conducted, reviewing both the February 2005 order and the August 2005 order awarding TPD benefits. The administrative law judge's recommended findings of fact, conclusion of law, and order reversed WSI's August 2005 order awarding TPD benefits and affirmed WSI's February 2005 order denying specific benefits.
- Workforce Safety and Insurance did not agree with the recommended findings of fact, conclusion of law, and order as it related to the reversal of the August 2005 order awarding TPD benefits.
- July 2006 - Workforce Safety and Insurance issued a memorandum opinion outlining its reasons for rejecting the administrative law judge's recommendations to reverse the order awarding TPD benefits.
- August 2006 - The injured employee signed a stipulated agreement with WSI addressing the issues of whether the injured employee had proven a compensable psychological injury as well as whether the vocational plan was appropriate. The general terms of the stipulation were WSI would pay the injured employee TPD benefits for three years, the injured employee would wave entitlement to vocational rehabilitation benefits, and the injured employee would waive any entitlement to medical treatment for any type of mental condition.

Issues for Review

The workers' compensation issues raised by the injured employee included:

- Workforce Safety and Insurance failed to provide benefits for the injured employee's depression and failed to accept that depression affected the injured employee's ability to effectively participate in his rehabilitation. As a result, the rehabilitation plan put together by WSI was not realistic. Additionally, there is a problem with the system when OIR and the administrative law judge both recognize a problem with WSI's decision, but WSI has the authority to disregard these positions.
- Many of the unsatisfactory things that happened in the injured employee's case were attributable to the injured employee's depression, extreme pain, and ongoing medical problems, which were not appropriately addressed by WSI.
- In determining which medical and prescription bills WSI will cover, WSI exercises its discretion too broadly. Workforce Safety and Insurance uses a pharmacist to review prescription coverage, and if a prescription is red-flagged, it may take significant time for WSI to evaluate and make a final decision whether WSI will cover the prescription.
- The fact that a majority of WSI's fraud investigations are against injured employees tends to create an adversarial environment.
- Although the appeal system is in place to deal with disagreements, the reality is that an injured employee can only move forward if the injured employee can find legal representation. The limitations on attorney's fees adversely impact the willingness of attorneys to take WSI appeal clients.
- Workforce Safety and Insurance seldom exercises its continuing jurisdiction to address wrongs done to injured employees.
- Workforce Safety and Insurance should take into account and consider whether an injured

employee qualifies for Social Security disability benefits.

Workforce Safety and Insurance Response

The WSI representative testified this claim came down to the two issues of whether the injured employee's psychological condition was compensable and whether the vocational rehabilitation plan was appropriate.

The WSI representative testified in this claim the administrative law judge determined the psychological condition was not compensable. North Dakota, like a majority of states, is a physical/mental state, which means in order to be a compensable injury a claimant must establish that a physical injury directly caused a mental condition. A minority of states are mental/mental which means they compensate a mental condition that arises from a psychological trauma.

The WSI representative testified it is expected that when an injured employee is unable to return to past employment there will be depression to some degree. However, state law requires that an injured employee participate in vocational rehabilitation and attempt to return to work. In this case WSI recognized the psychological limitations and for that reason the rehabilitation plan provided for two years of psychological coverage to allow the injured employee to complete school and return to work. In creating rehabilitation plans, to the extent an injured employee has limitations, whether work injury-related or not, the rehabilitation plan needs to take these limitations into account in developing the plan.

The WSI representative testified in putting together a vocational rehabilitation plan for attending school, the plan may include receipt of wage-loss benefits, payment of tuition, payment for a laptop computer, and receipt of a second domicile allowance as well as other financial programs.

The WSI representative reported WSI has experienced moderate success in working with state schools in placing injured employees. Although the schools appreciate the guaranteed payment that comes with enrolling WSI rehabilitation students, there are also concerns that the rehabilitation student might not really want to be attending school.

As it relates to WSI prescription coverage, the WSI representative testified if WSI does not cover a prescription, this decision is appealable as are all other WSI orders. If a prescription is off-formulary, WSI attempts to address the issues at the point of sale. If a prescription is for an off-label use, WSI will not cover the prescription until evaluated.

INFORMATION REQUESTED

Background Information

As part of the study and the consideration of possible changes to the workers' compensation system, the committee requested and received from WSI an overview of the workers' compensation benefits system and terminology, a review of recurring workers' compensation policy issues and the historical evolution of these issues, a summary of 2007 legislation impacting WSI, and identification of workers' compensation policy issues and trends. Additionally, the committee requested and received an overview of the WSI premium rates; the status of the WSI fund; the status of the recent financial audits, internal audit, performance audit and evaluation, and IME audit; and an overview of the WSI information technology initiative.

Continuing Jurisdiction Program

The committee requested and received a status report on WSI's continuing jurisdiction project. Workforce Safety and Insurance initiated a program through which applications were accepted from injured employees to request that WSI exercise its continuing jurisdiction and review the injured employees' WSI claims. Workforce Safety and Insurance accepted a total of 426 applications for claim review. As of the date of the report, 131 claims remained to be reviewed. Of the 295 claims that had been reviewed, there was an approximately 8 percent to 9 percent modification rate.

Twenty-six of the 295 claims reviewed resulted in WSI offering to modify an order. The 26 claims break down as follows:

- Nine claim reviews resulted in complete reversal. It is typical of these cases that there was a discovery of new evidence since the initial order or it was a case where there was an incredibly close call and the initial order could have gone either way.
- Five claim reviews resulted in partial reversal.
- Two claim reviews resulted in a medical bill reversal.
- Three claim reviews resulted in the parties signing a stipulation. It is typical of these cases that there was a reversal of a medical bill.
- Two claim reviews resulted in the injured employee being granted a PPI evaluation.
- Five claim reviews resulted in WSI recognizing an appeal process question. Of these five claims, three resulted in the claim being reopened to allow for further adjudication and two resulted in WSI offering to reopen the case for further adjudication; however, those two injured employees did not respond to WSI's invitation.

New Claims - Processing Timelines

The committee requested and received a report on the history of, a summary of, and the status of the changes resulting from House Bill No. 1171 (2005), relating to claim processing timelines.

North Dakota's workers' compensation system was characterized as providing three benefit structures, depending on the date of injury. Over time, state's workers' compensation law has undergone some significant changes resulting in different benefit structures--with the first benefit structure covering those injured employees who were injured before the 1995 legislative changes went into effect, the second benefit structure covering those injured employees injured after June 1995 but before 2006, and the third benefit structure covering those injured employees injured post 2005.

House Bill No. 1171 became effective for claims filed after December 31, 2005. One of the major statutory changes in the bill was to clarify the definition of PTD and to limit receipt of TTD to a maximum of 104 weeks. Since the law has not been in place very long, there are a limited number of cases to review. Based on the claims filed from January 2006 to December 2007, there were nine claims that exhausted the 104-week TTD limit. In all of these nine cases, the injured employee was determined to have zero earning capacity; therefore, the injured employee was receiving TPD. The transition from TTD to TPD results in the same amount of wage-loss benefits.

Of the nine claims that exhausted TTD eligibility, one injured employee would likely stay on TPD for five years, four injured employees had vocational plans still pending, two injured employees were earning the same level of benefits as TTD but were unable to move forward with vocational rehabilitation due to medical limitations, and two injured employees were in retraining programs.

Correspondence

The committee requested and received a report on efforts taken by WSI to improve the clarity of WSI's communications with injured employees. Workforce Safety and Insurance initiated an internal review of form letters and other correspondence to improve clarity in communication. As WSI completes this internal review, it will hold focus groups to determine whether the proposed changes are responsive. Some of the basic changes being proposed in revising forms and correspondence include use of red ink for important information, clarifying the name of the document, and clarifying on envelopes that the material enclosed requires a response.

Office of Independent Review

The committee requested and received from WSI an overview of the process used and services provided by the OIR. Information was received regarding the history of OIR, the mission of OIR, as well as the independent review appeal process.

The Workers' Adviser Program was legislatively established in 1995 to provide injured employees with a no-cost, speedy resolution alternative to litigation. The program operated independently from WSI's claims and was scheduled to sunset after four years. In 1999 the sunset provision was repealed and the program was renamed the Office of Independent Review.

In 2000 OIR moved to a location separate from WSI. Since 2002 the duties of OIR have been expanded to include constituency services and binding dispute resolution. Since November 2005 OIR has dedicated a full-time outreach staff.

The Office of Independent Review services include:

- Providing injured employees education to better understand the basis of WSI's decision as well as to better understand the appeal process;
- Serving as a form of alternative dispute resolution; and
- Providing a door through which an injured employee who ultimately prevails in litigation may be awarded attorney's fees.

The objective of the review process is to ensure the injured employee has been granted every opportunity to tell the employee's side of the story, analyze a claim with a fresh set of eyes, facilitate an agreement between the parties, and collaborate with WSI departments. Upon receiving a certificate of completion from OIR, the injured employee has a 30-day period to appeal the WSI order.

The Office of Independent Review received the following requests for reviews:

- Fiscal year 2000 - 531.
- Fiscal year 2001 - 453.
- Fiscal year 2002 - 478.
- Fiscal year 2003 - 401.
- Fiscal year 2004 - 383.
- Fiscal year 2005 - 428.
- Fiscal year 2006 - 384.
- Fiscal year 2007 - 397.

Of these claims requesting review, approximately 20 percent result in a recommendation to change a WSI decision.

The committee discussed whether there should be any legislative changes made to the law creating OIR. Issues the committee considered included:

- Whether OIR should be independent of WSI, and, if so, whether OIR should be freestanding or located within an existing agency.
- Whether OIR should be granted more authority in reviewing WSI decisions, including whether OIR should be granted the authority to implement forms of alternative dispute resolution such as mediation or arbitration.
- Whether an injured employee should be required to use the services of OIR to be entitled to receive attorney's fees.
- Whether OIR should be renamed because the current name is misleading in that OIR is not truly independent of WSI.

The committee received testimony that when OIR was originally created in 1995, it was set to expire in 1999 and the name of the entity was the Workers' Advisor Program. In 1999 the program was made permanent and the name of the program was changed to the Office of Independent Review. The Office of Independent Review was never intended to be completely separate from WSI.

Vocational Rehabilitation and Return-to-Work Services

The committee requested and received from WSI an overview of the state's workers' compensation vocational rehabilitation services and return-to-work services. The WSI return-to-work services include onsite case management at six medical facilities in the state; medical case management provided by registered nurses; vocational rehabilitation services; provision of relocation expenses; school monitoring through which school and skill enhancement programs are coordinated and monitored; the preferred worker program through which

employers are encouraged to employ injured employees; reemployment services specialist services through which a broad range of services are used, including one-on-one assistance for hard-to-place injured employees, personal contact with employers, and providing group injured employee training sessions; the exceptional circumstances scholarship program; and the education loan fund.

The committee received testimony that WSI does have statistics regarding how many injured employees find employment during the course of receiving services but does not have statistics regarding how many injured employees find jobs following completion of receipt of services or whether individual return-to-work attempts are successful.

Permanent Partial Impairment

The committee requested and received from WSI a brief history of North Dakota's workers' compensation PPI law. As part of this review, committee members reviewed portions of the North Dakota workers' compensation interim permanent partial impairment study dated September 11, 2000, prepared by Mr. Malcolm Dodge, Professional Risk Management. This report was initially provided to the Legislative Council's interim Commerce and Labor Committee as part of WSI's report on the study of the awards provided to injured employees with permanent impairments caused by compensable work injuries.

Since the workers' compensation system was created in 1919, the benefits available for permanent impairment have evolved. As a result of a 1974 North Dakota Supreme Court decision, the WSI PPI benefit system was modified to more closely reflect a tort award, instead of reflecting the inability of an injured employee to earn a wage. Under the current system, an injured employee may now receive both a PPI award and a permanent disability award.

In 1995 the PPI benefit system underwent appreciable change, including revising the law to create a minimum PPI threshold of 16 percent. The legislative history indicates the two likely reasons for this revision were that most adults have some degree of disability no matter what their work injury history may have been and there were benefit changes in 1989 which increased the weekly PPI benefit approximately 74 percent.

COMMITTEE CONSIDERATIONS

Office of Independent Review - Name Change

The committee considered but does not recommend a bill draft that would have changed the name of the OIR to the WSI Decision Review Office.

Continuation of Benefits Through Appeal

The committee considered the issue raised by several injured employees that it is a financial hardship to go without wage-loss benefits during the period of appeal of an order decreasing or terminating wage-loss benefits. The committee received testimony that if an order decreasing or terminating wage-loss benefits is reversed, WSI pays the injured employee back to the date of the order decreasing or terminating the benefits. The committee weighed the benefits of continued benefits with the cost of receiving benefits and the injured employee then having to repay WSI if the benefits were received in error.

The committee considered but does not recommend a bill draft that, in the case of a reduction or termination of WSI wage-loss benefits, would have provided the injured employee the opportunity to request to continue to receive the preorder amount wage-loss benefits through the administrative hearing process.

Legislative Council Study - Social Security Benefits

The committee considered but does not recommend a concurrent resolution that would have provided for a Legislative Council study of the state's workers' compensation system and whether it is feasible and desirable in making a workers' compensation eligibility determination to consider whether that injured employee qualified for federal Social Security disability insurance or supplemental security income.

RECOMMENDATIONS

Firefighter and Law Enforcement Presumption

The committee recommends Senate Bill No. 2055 to clarify the burden of proof under workers' compensation law that provides a presumption for firefighters and law enforcement officers. The bill provides the presumption that the impairment is work-related can be overcome by clear and convincing evidence the impairment is not work-related. Under existing law, the burden of overcoming the presumption is a showing by competent evidence that the impairment is not work-related.

Mileage Reimbursement

The committee recommends Senate Bill No. 2056 to amend the workers' compensation calculation for medical travel mileage reimbursement to an injured employee so actual mileage is used to compute the reimbursement instead of using city limit to city limit mileage to compute the reimbursement.

Permanent Partial Impairment for Vision Injury

The committee recommends Senate Bill No. 2057 to provide a scheduled workers' compensation PPI award for impairment of vision. The bill provides a graduated schedule for vision impairments beginning at 20/80 corrected visual acuity.

Independent Medical Examinations

The committee discussed concerns raised by injured employees regarding IMEs. The committee considered whether steps should be taken to address:

- The concern IME opinions are given more weight than the opinions of treating doctors;
- The concern IMEs are inconvenient because they frequently are conducted by out-of-state doctors;
- The concern IME doctors are biased in favor of WSI;

- The perception IME doctors are not accessible because they do not physically attend administrative hearings; and
- The perception IME doctors do not take adequate time to perform a thorough examination of the injured employee.

The committee received testimony that WSI is taking steps to improve the IME process, including working with North Dakota medical providers to try to foster relationships with in-state doctors; considering alternatives to the current IME process, such as establishing three-member review boards to consider IME decisions; and improving communication so injured employees better understand the IME process.

The committee recommends Senate Bill No. 2058 to provide a distinction between a WSI independent medical examination, which contemplates an actual examination of an injured employee, and an independent record review, which contemplates a file review of an injured employee's medical records.

Case Reviews

The committee discussed issues raised by injured employees regarding the difficulties injured employees face in negotiating the workers' compensation system. Committee members recognized the importance of injured employees understanding their obligations and opportunities available in working through the workers' compensation system. Often injured employees make decisions based on lack of knowledge or understanding and those decisions negatively impact the injured employees' workers' compensation claims.

The committee members discussed whether there might be value in creating a WSI position to specifically assist injured employees in negotiating the workers' compensation system. This service would be separate from the services offered by claims analysts and the services offered through OIR.

Several injured employees testified they were unable to afford legal representation to appeal a WSI decision, and, in any event, there are limited numbers of attorneys willing to take injured employees as clients. The committee discussed it might be beneficial to provide funds to pay for an injured employee's attorney's fees to review a WSI decision. The payment of attorney's fees for a case review may have the duel effect of increasing the number of attorneys willing to take injured employees as clients and it might also assist the injured employee in better understanding WSI's decisions and whether there is value in appealing the decision.

The committee recommends Senate Bill No. 2059 to provide for WSI to pay an injured employee's attorney's fees and costs for a case review. The bill allows an injured employee who uses the services of OIR to be eligible for payment of $500 for attorney's fees and $150 for costs associated with an attorney consultation before an administrative hearing is held.

Artificial Members

The committee recommends House Bill No. 1061 to expand the workers' compensation coverage of artificial members. The bill would extend the definition of "artificial members" to include a prescriptive device that is an aid for a natural part, organ, limb, or other part of the body if the damage to the prescriptive device is accompanied by an injury to the body.

Rehabilitation Services

The committee considered the concerns raised by several injured employees that WSI's rehabilitation services are inadequate. Issues included:

- The concern WSI does not assist the injured employee finding employment once rehabilitation services are completed;
- The jobs identified in an injured employee's FCE are not available or the injured employee is not actually qualified to hold these jobs;
- The injured employee is not involved in the creation of the employee's rehabilitation plan;
- Workforce Safety and Insurance expects rural injured employees to move to get low-paying jobs;
- Telemarketing is the default job for injured employees capable of sedentary employment;
- Under the new claims management system, the injured employee is rushed into rehabilitation services too quickly and without the necessary medical documentation; and
- There is a lack of statistics regarding the effectiveness of WSI's rehabilitation services.

The committee recommends House Bill No. 1062 to expand the workers' compensation rehabilitation awards by allowing WSI to provide an additional 20 weeks of benefits for injured employees participating in retraining programs and to provide an additional two months of benefits while the injured employee is participating in work search and to direct WSI to implement a system of pilot programs to assess alternative methods of providing rehabilitation services.

Preexisting Conditions

The committee recommends House Bill No. 1063 to limit the circumstances under which WSI may deny medical coverage or recoup medical payments.

Cost-of-Living Adjustment

The committee recommends House Bill No. 1064 to shorten to three years the period of time after which an injured employee receiving temporary total disability benefits or permanent total disability benefits qualifies for supplementary benefits and to shorten to three months the period of time an injured employee is required to be off wage-loss benefits before WSI recalculates benefits.

WORKFORCE COMMITTEE

The Workforce Committee was assigned four studies. Section 20 of House Bill No. 1018 (2007) directed a study of the state's system for addressing workforce needs through a workforce system initiative that includes receipt of agency reports regarding implementation of workforce legislation enacted during the 2007 legislative session, active participation in focus groups across the state, and active participation in a workforce congress. Section 3 of Senate Bill No. 2149 (2007) directed a study of job development authorities across the state to determine the economic impact created by the authorities, to examine funding mechanisms used by the authorities when expending resources for economic development purposes, and to determine whether the authorities serve a viable purpose. House Concurrent Resolution No. 3025 (2007) directed a study of possible methods of growing North Dakota's population and increasing the available workforce in the state. The chairman of the Legislative Council directed a study of the means by which the North Dakota University System fulfills North Dakota's workforce needs.

The Workforce Committee was charged with receiving the following six workforce-related reports:

1. Statewide Longitudinal Data System Committee report on the status of the plan for a longitudinal data system (North Dakota Century Code (NDCC) Section 15.1-02-18).
2. Department of Commerce Division of Community Services annual reports on renaissance zone progress (NDCC Section 40-63-03).
3. Commissioner of Commerce report on the process used and factors considered by the commissioner in identifying target industries on which economic development efforts are focused and the special focus target industry (NDCC Section 54-60-11).
4. Compilation and summary of state grantor reports filed annually by the Department of Commerce and the reports of state agencies that award business incentives for the previous calendar year (NDCC Section 54-60.1-07).
5. Department of Commerce report on the department's Renaissance Zone Conference activities and the department's recommendations resulting from the conference (2007 Session Laws, Chapter 18, Section 19).
6. Department of Commerce report on the implementation and successes and failures of the Beginning Again North Dakota pilot program and whether the program should be continued or continued and expanded (2007 Session Laws, Chapter 18, Section 38).

Committee members were Senators Tony Grindberg (Chairman), Ray Holmberg, Dave Nething, and Tom Seymour and Representatives Donald L. Clark, Stacey Dahl, Mary Ekstrom, Glen Froseth, Eliot Glassheim, Pam Gulleson, Nancy Johnson, George J. Keiser, Lisa Meier, Lee Myxter, Dan J. Ruby, Clark Williams, and Steve Zaiser.

The committee submitted this report to the Legislative Council at the biennial meeting of the Council in November 2008. The Council accepted the report for submission to the 61st Legislative Assembly.

REPORTS

Statewide Longitudinal Data System Committee

The committee received the *State of North Dakota Longitudinal Data System Strategic Roadmap Executive Summary*. The summary provided:

> Each biennium, North Dakota and its citizens invest billions of dollars across many state agencies to maintain and improve the quality of life for residents of the state. Each program operated by these agencies collects some type of performance data to measure short-term and medium-term outcomes. However, data collected within a program does not always provide a fuller picture of longer-term, or "longitudinal" outcomes, for how the program and its participants fared over time.
>
> This report, the State of North Dakota Longitudinal Data System Strategic Roadmap, lays out the planning, development, and budget efforts that are required to realize a data repository that unifies key data from public PK-12, higher education, and workforce development initiatives and provides the analytical insight to better administer state services and foster economic development. The LDS Strategic Roadmap presented here is a product commissioned by the state's Longitudinal Data System (LDS) Committee, which was formed in 2007 after interest in data warehousing was expressed by several state agencies.

The summary provided recommendations that included the following project milestones:

- 2009-11 biennium:
  Implement a data governance program;

  Create state longitudinal data system infrastructure (established in Phase 1) to replace current followup information on North Dakota education and training (FINDET) functionality; and

  Implement a kindergarten through grade 12 data warehouse.
- 2011-13 biennium:
  Complete state longitudinal data system Phases 2 and 3; and

  Establish an education program to build analytical capability among users.
- 2013-15 biennium:
  Continue operations, maintenance, and ongoing enhancements to the state longitudinal data system.

The Statewide Longitudinal Data System Committee was authorized $50,000 to hire a consultant. The Statewide Longitudinal Data System Committee is

halfway through the recommendations of the consultants and final cost figures have not been determined.

Renaissance Zone

The committee received annual reports from the Department of Commerce Division of Community Services on renaissance zone progress.

Target Industries

The committee received the biennial report from the Commissioner of Commerce on the process used and factors considered by the commissioner in identifying target industries on which economic development efforts are focused and the special focus target industry.

The Commissioner of Commerce reported the five target industries were formalized and adopted by the Governor and the North Dakota Economic Development Foundation as part of the state's strategic plan for economic development. The target industries identified were energy, value-added agriculture, technology-based businesses, advanced manufacturing, and tourism. The commissioner reported that although the Department of Commerce will not be making any changes to the current five target industries, the department will be narrowing its focus within these target industries to focus on areas with the most opportunities for long-term growth. The commissioner reported energy was chosen as the special focus target industry due to the rapidly increasing role energy plays in North Dakota's economy.

The Commissioner of Commerce reported the Department of Commerce is using the resources and tools granted by the Legislative Assembly to target industries and help grow North Dakota's economy. Some possible legislative actions to consider include:

- Implement the Empower North Dakota Commission recommendations;
- Address infrastructure needs for energy development;
- Create a robust and market-based education and workforce training system;
- Develop tax and financing incentives to promote automation and productivity;
- Expand trade services through the North Dakota Trade Office;
- Continue support and funding for the centers of excellence program;
- Expand support for entrepreneurial startups, programming, and support; and
- Expand support for tourism marketing and development.

Business Incentives

The committee received the first and second annual state business incentive reports. The first report addressed state business incentives for calendar year 2006, and the second report addressed state business incentives for calendar years 2006 and 2007. Over time, the annual reports will include more data and will provide a better picture of effectiveness of state business incentives.

Renaissance Zone Conference

Report

The committee received a report from the Department of Commerce on the department's Renaissance Zone Conference activities and the department's recommendations resulting from the conference. The department hosted and facilitated the Renaissance Zone Conference on February 6, 2008. Invitations to the conference were sent to each incorporated city in North Dakota and to the members of the interim Industry, Business, and Labor Committee. More than 60 individuals from 42 different communities attended the conference.

The report included the following recommendations from the conference:

- Extend the time period for a renaissance zone. The law provides designation as a renaissance zone may not exceed 15 years. Cities that have been in the program for eight years are starting to ask whether the state will allow another renaissance zone after the first zone expires.
- Include the cost of demolition in a renaissance zone project. If a developer needs to demolish a building to expand or build a new building, the renaissance zone law should allow demolition costs to be part of the project or, in specific instances, allow demolition to be a stand-alone project. Some communities have older homes that have created both health issues and safety issues as the taxpayers are allowing the building to go back to the county for taxes which is creating a financial burden for some communities.
- Delete the half-mile requirement for the three-block island and allow the island to be anywhere in the city.
- Treat the historical tax credits like the other tax incentives and allow the credits to be transferred to the new owner.

Testimony

The testimony indicated the issue of demolition costs can be addressed administratively; however, the other three issues require legislative action. The Department of Commerce indicated that since the renaissance zone law was enacted in 1999 and the oldest of the renaissance zones are still several years from reaching the 15-year maximum, the department does not support enacting legislation addressing this issue during the 2009 legislative session.

The committee received testimony that renaissance zones such as the one in Bismarck would support expanding the renaissance zone law to include expenses incurred in updating utilities. As part of many renaissance zone projects, utilities would prefer to place utility lines underground, but this is cost-prohibitive.

Recommendations

The committee recommends Senate Bill No. 2060 to expand and modify the renaissance zone law to include tax incentives for repair or remodeling of utility infrastructure, to provide for transfers of historic

preservation and renovation tax credits, and to delete the half-mile requirement for the three-block island.

Beginning Again North Dakota

The committee received the report from the Department of Commerce on the implementation and successes and failures of the Beginning Again North Dakota pilot program and whether the program should be continued or continued and expanded.

The report indicated the Department of Commerce contracted with the North Dakota State University Extension Center for Community Vitality to implement the program. In soliciting applications from interested communities, there were no applicants from a city with a population of more than 1,500 but not more than 3,500. Therefore, the Department of Commerce selected the following two smaller cities from the applicants--Tower City and Walhalla.

The two participating communities were surveyed at the end of the project and indicated support for the program, indicating they would recommend the program to other communities and recognized there was value to the program. A representative of the Department of Commerce reported the department is open to the idea of continuing the program but will wait until the 2009 legislative session before making a determination of whether to support legislation to continue the program.

WORKFORCE SYSTEM STUDY

In addition to working with the Department of Commerce, the committee received assistance from the Economic Development Association of North Dakota in conducting the workforce system study. The Legislative Council and Department of Commerce contracted with a private entity to provide professional services to plan, facilitate, report on, and coordinate followup for the study.

Study Background

The 2007-08 workforce system initiative takes the place of what would have been the third of a three-interim business climate initiative of the Legislative Council. During the 2003-04 interim, the Legislative Council's Economic Development Committee conducted a primary sector business climate study, which was the first of the three-interim initiatives. That committee recommended Senate Bill No. 2032 (2005), which, under Section 17, provided for a two-interim continuation of the activities. Through the course of the 2005 legislative session, several of the provisions of Senate Bill No. 2032, as introduced, were relocated to Senate Bill No. 2018--the appropriation bill for the Department of Commerce. Therefore, the initiatives of that committee are identified as being from Senate Bill No. 2032 or Senate Bill No. 2018.

During the 2005-06 interim, the Legislative Council's Economic Development Committee conducted a business climate study, which was the second of the three-interim business climate initiatives. That committee recommended House Bill No. 1027 (2007) as the business initiative bill draft. House Bill No. 1027 failed in the Senate and the provisions of the bill were relocated to several bills, with House Bill No. 1018--the appropriation bill for the Department of Commerce--being the primary vehicle for the committee's recommendations.

The recommendation to expand the required 2007-08 interim business climate study focus group activities to include young professionals was replaced with the repeal of the provision requiring the business climate study and the creation of the workforce system study. In effect, the workforce system study takes the place of the third of the three-interim business climate initiatives.

2003-04 Interim Economic Development Committee

The Economic Development Committee 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. The committee recommended two bills--Senate Bill No. 2032 addressed a broad range of economic development and business climate issues, and House Bill No. 1031, which did not pass the Senate, would have modified the law relating to tax exemptions within urban renewal development or renewal areas.

The Legislative Assembly enacted a majority of the programs recommended by the Economic Development Committee, either as part of the business climate initiative bill--Senate Bill No. 2032--or the Department of Commerce appropriation bill--Senate Bill No. 2018. The enacted provisions:

- Extended and expanded the Bank of North Dakota's authority to invest its funds in North Dakota alternative and venture capital investments and early-stage capital funds.
- Rewrote the centers of excellence law, repealing the existing North Dakota Century Code section and creating a new chapter.
- Modified the membership of the Emergency Commission.
- Required the Office of Management and Budget to establish a procurement information Internet website.
- Modified the seed capital investment tax credit laws.
- Repealed the laws relating to venture capital corporations and the Myron G. Nelson Fund, Inc., effective August 1, 2007.
- Required two studies--the North Dakota business climate initiative and venture and risk capital.
- Required multiple agency studies and reports to the Legislative Council.
- Modified the organization of the Department of Commerce Division of Economic Development and Finance to rename and modify the International Business and Trade Office and

clarify the duties of the North Dakota American Indian Business Development Office.

- Provided a Division of Economic Development and Finance program for local economic developer certification.
- Required the Commissioner of Commerce to identify target industries.
- Provided for a Department of Commerce program for North Dakota image information.
- Provided for a Department of Commerce business hotline program.
- Provided for a Dakota Manufacturing Initiative, through which the Department of Commerce was directed to seek to contract with The Dakota Manufacturing Extension Partnership, Inc.
- Required multiple agency studies and reports to the Legislative Council.

2005-06 Interim Economic Development Committee

The Economic Development Committee studied the state's business climate through a business climate initiative, including receipt of agency reports regarding economic development legislation introduced by the Legislative Council during the previous legislative session, participation in business climate focus groups across the state, and participation in a Business Congress. In addition to working with the Department of Commerce, the committee received assistance from the Greater North Dakota Chamber of Commerce in conducting the business climate study. Two private consultants provided professional services to plan, facilitate, report on, and coordinate followup for the focus groups and the Business Congress.

Although the Legislative Assembly enacted several of the provisions recommended by the Economic Development Committee in House Bill No. 1027, the bill failed to pass in the Senate and the provisions of the bill were relocated to several other bills, i.e., House Bill No. 1016, House Bill No. 1018, Senate Bill No. 2120, and Senate Bill No. 2180. The committee recommendations underwent significant revision in the course of the legislative session and as enacted:

- Provided for the workforce system study during the 2007-08 interim.
- Authorized the Industrial Commission, acting as the Housing Finance Agency, to establish certain housing finance programs. Specifically, the scope of the mortgage loan financing program was expanded to include assistance in the development of low-income to moderate-income housing or to assist a developing community address unmet housing needs or alleviate a housing shortage, and the scope of the housing grant program was expanded to include assisting a developing community address unmet housing needs or alleviate a housing shortage.
- Provided for a Legislative Council study of housing needs during the 2007-08 interim.
- Expanded the definition of "agricultural commodity processing facility" for purposes of the agricultural business investment tax credit law, to provide an agricultural commodity processing facility may include a livestock feeding, handling, milking, or holding operation that uses a byproduct from an ethanol or biodiesel plant located in this state.
- Amended the laws relating to the beginning entrepreneur loan program by amending the definition of "beginning entrepreneur" by simplifying the net worth limitations and increasing from $4 million to $8 million the maximum amount the Bank of North Dakota may guarantee in loans under the beginning entrepreneur loan program.
- Amended the laws relating to the biodiesel partnership in assisting community expansion (PACE) program and would have provided appropriations for the biodiesel PACE program and the PACE (flex PACE) program.
- Required the Commissioner of Commerce to create a biennial tax expenditure report and a state business incentive expenditure report.
- Increased the annual cap of the seed capital investment tax credit from $2.5 million to $5 million.
- Expanded the sales tax exemptions to include tourism equipment and wireless service provider equipment.
- Provided for a Legislative Council study of wireless service providers during the 2007-08 interim.
- Repealed the beginning entrepreneur income tax incentives.
- Created a tax credit for business expenses associated with recruitment for hard-to-fill employment positions.
- Created an internship employment tax credit.
- Directed the Department of Career and Technical Education to administer a program to provide matching fund grants to teachers and schools for the purpose of funding innovative science, technology, or innovation programs for students in kindergarten through grade 12.
- Increased the research and experimental expenditures tax credit from 8 percent of the first $1.5 million in research expense and 4 percent of research expenses in excess of $1.5 million to 25 percent of the first $100,000 in research expenses and 20 percent of research expenses in excess of $100,000, redefined "base period research expenses" to only include research conducted in North Dakota, and allowed taxpayers to "assign" unused tax credits.
- Provided for the State Board of Higher Education to study implementation of services of CCbenefits, Inc., and report to the Legislative Council during the 2007-08 interim (Higher Education Committee).
- Modified the centers of excellence program to provide for making a distinction among three types of centers--commercialization, workforce, and infrastructure; provided that the Department of Commerce provide the Centers of Excellence

Commission with staff services, including assisting with preaward reviews and postaward monitoring; required the commission to provide for independent expert review of complete applications to establish viability and likelihood of desired economic impact; required the commission to conduct postaward monitoring of centers for 6 years to 10 years; required an applicant to show due diligence in putting together the proposal and high likelihood of viability and success; and clarified that funds are not to be distributed if private sector participants stop participating.

- Provided a $600,000 appropriation to Job Service North Dakota for increasing the level of the website spider program used to identify job listings available in North Dakota.
- Expanded the duties of the Department of Commerce Division of Workforce Development adding the duties of developing and implementing the state's talent strategy and a statewide intelligence coordination strategy, which would include establishing details of the talent strategy, developing a consolidated biennial statewide strategic plan for the state's system for workforce development, workforce training, and talent attraction; continuously reviewing the state's workforce development system; developing a system of performance and accountability measures for the state's workforce development system; requiring that intelligence be disseminated to partners; requiring that FINDET data be a central source of intelligence; and requiring that the Division of Workforce Development administer the FINDET system.
- Provided for the Department of Commerce to provide career education and career promotion services.

Other 2007-08 Interim Committees

In addition to the activities of the Workforce Committee, during the 2007-08 interim there were several committees with workforce-related charges.

Budget Section

The workforce-related charges of the Budget Section include:

- Approve, reject, or rerefer, upon receiving a recommendation from the Emergency Commission and in conjunction with the State Board of Higher Education and the North Dakota Economic Development Foundation, designation of a center of excellence recommended by the Centers of Excellence Commission (NDCC Section 15-69-02);
- Receive annual audits from a center of excellence that is awarded funds under NDCC Chapter 15-69 on the funds distributed to the center until completion of four years following the final distribution of funds (NDCC Section 15-69-05);
- Approve any annual tuition increase of more than 5 percent for each year by the State Board of Higher Education for students attending institutions under its control for the 2007-08 and 2008-09 academic years (Section 18 of House Bill No. 1003 (2007));
- Approve up to $10 million for funding centers of excellence at the first Budget Section meeting after September 1, 2007, and approve the remainder of the $15 million appropriation for funding centers of excellence at the first Budget Section meeting after September 1, 2008 (Section 14 of House Bill No. 1018 (2007)); and
- Approve, with the Emergency Commission, a loan of $5 million by the Bank of North Dakota to the Office of Management and Budget for the purpose of providing funding to centers of excellence as directed by the Centers of Excellence Commission (Section 15 of House Bill No. 1018).

Education Committee

The workforce-related charges of the Education Committee include:

- Study the appropriateness and adequacy of high school curricula, with respect to preparing students for higher education and for the workplace, and examine curricular changes implemented in other states and expectations placed on students in other countries (Section 11 of Senate Bill No. 2030 (2007));
- Receive report from the Statewide Longitudinal Data System Committee on the status of the plan for a longitudinal data system (NDCC Section 15.1-02-18); and
- Receive report from the Superintendent of Public Instruction regarding the planning and development of the electronic course delivery approval process for approving the provision of elementary or high school courses electronically to a student, school, or school district (Section 2 of House Bill No. 1491 (2007)).

Higher Education Committee

The workforce-related charges of the Higher Education Committee include:

- Study the means by which the North Dakota University System can further contribute to developing and attracting the human capital to meet North Dakota's economic and workforce needs, including ways to increase postsecondary access, improve the quality of education, contain costs, and other means, including productivity, to maximize the usage of the University System in meeting the human capital needs of the state; including a review of policy recommendations that address the postsecondary delivery system, including the mix of institutions, educational attainment gaps, degree production gaps, recruitment and retention of students, and workforce training needs; and including a review of the impact of the state's changing demographics on the University System long-term financing plan (Section 23 of House Bill No. 1003 (2007)); and

- Receive report from the State Board of Higher Education on the status of the implementation of the CCbenefits, Inc., services and any recommendations relating to the use of the CCbenefits, Inc., services (Section 23 of House Bill No. 1018 (2007)).

Human Services Committee

The workforce-related charges of the Human Services Committee include:

- Study the temporary assistance for needy families (TANF) program administered by the Department of Human Services, including review of the sustainability of current services and programs being funded by TANF funds, review of the potential programs and services that could be funded by use of TANF funds, and review of the need for increased assistance to recipients of TANF who are attending a postsecondary institution of learning (Section 3 of Senate Bill No. 2186 (2007));
- Receive report from the Department of Human Services regarding the transition assistance for the child care program implemented pursuant to Section 1 of Senate Bill No. 2186 (Section 5 of Senate Bill No. 2186); and
- Receive report from the dean of the University of North Dakota College of Nursing regarding the Nursing Education Consortium to address common concerns in nursing education (Section 1 of Senate Bill No. 2379 (2007)).

Industry, Business, and Labor Committee

The workforce-related charges of the Industry, Business, and Labor Committee include:

- Participate in the Department of Commerce Renaissance Zone Conference to review the list of projects which have been undertaken under the renaissance zone program, evaluate whether the projects have positively impacted the renaissance zone communities, consider options for smaller communities to become involved in the renaissance zone program or a similar program, and make recommendations regarding how the program could be improved to further meet the needs of the state and local communities (Section 19 of House Bill No. 1018 (2007));
- Study the organization, powers, duties, and effectiveness of the Department of Commerce, including review of the legislative history leading to the creation of the department; review of the legislative and executive branch expectations in the creation of the department and whether those expectations are being met; evaluation of the effectiveness of the North Dakota Economic Development Foundation in providing a nonpartisan, private sector perspective to the department's approach to the department's duties; evaluation of the organizational structure of the department, including whether the department should include a division of science and technology; and evaluation of the strategic planning process of the department and its effectiveness (Section 21 of House Bill No. 1018);
- Study the licensure, training, and classroom education requirements for electricians in this state; reciprocity agreements with other states and the effect of those agreements on standards in this state; and the effect of the licensure, training, classroom education requirements, and reciprocity agreements on the availability of qualified electricians in this state (Section 2 of House Bill No. 1218 (2007));
- Study the regulation and licensing of pharmacists in this state, including an examination of the State Board of Pharmacy, the board's size, the manner of board membership appointment, and whether the board is representative of commercial and noncommercial pharmacists; the state's demographics and the impact changing demographics in rural areas will have on the ability of small, locally owned pharmacies to remain economically viable and of rural residents to access low-cost pharmaceuticals and pharmacy and pharmacists' services; pharmacy ownership restrictions, the relevance of those restrictions in terms of marketplace competition, and the impact of those restrictions on the price and availability of pharmaceuticals and on pharmacy and pharmacists' services; and statutory interplay between the board and the North Dakota Pharmaceutical Association and whether the regulatory function of the board conflicts with the advocacy function of the association (Section 2 of House Bill No. 1299 (2007)); and
- Study issues relating to wireless service providers in the state and how wireless service impacts the business climate in the state (Section 28 of House Bill No. 1018).

Information Technology Committee

The workforce-related charges of the Information Technology Committee include:

- Receive report from the State Board of Higher Education, on request, regarding higher education information technology planning, services, and major projects (NDCC Section 15-10-44);
- Receive report from the Statewide Longitudinal Data System Committee on the status of the plan for a longitudinal data system (NDCC Section 15.1-02-18); and
- Receive information from the State Board of Higher Education regarding higher education information technology planning, services, and major projects (NDCC Section 54-35-15.2).

2007-08 Workforce Committee Activities

Under Section 20 of House Bill No. 1018 (2007), the three main directives for the Workforce Committee during the 2007-08 interim were to receive agency reports regarding implementation of workforce legislation enacted during the 2007 legislative session, participate

in focus groups across the state, and participate in a workforce congress.

Participation in Focus Groups

The Workforce Committee was charged with actively participating in a minimum of four workforce focus groups across the state. The focus groups were responsible for discussing ways to enhance the state's system for addressing workforce needs, including:

- Workforce availability;
- Skilled workforce needs;
- Future workforce needs; and
- Alignment of the state's higher education curriculum with the state's current and future workforce needs.

The Department of Commerce had several duties relating to the activities of the workforce system study. The department, in consultation with the Workforce Committee:

- Organized the focus groups;
- Convened five focus groups;
- Compiled focus group participant invitation lists;
- Drafted and distributed focus group invitations;
- Established focus group dates and locations; and
- Prepared agendas for focus groups.

The focus group schedules and activities took into consideration the workforce study activities of the department, including the Governor's Workforce Summit, held October 11-12, 2007, in Bismarck.

The Legislative Council and Department of Commerce entered a contract with a third party to provide the Workforce Committee and department with professional services to plan, facilitate, report on, and coordinate followup for the focus groups and the Workforce Congress. House Bill No. 1018 included an appropriation of $50,000 to the department to help fund the workforce system initiative.

Participation in Workforce Congress

Much like the focus groups, the committee was charged with actively participating in a workforce congress. The activities of the Workforce Congress included:

- Receipt of a report on the activities of the focus groups;
- Identification of methods to enhance the state's workforce system in order to be well-positioned to participate in a knowledge-driven economy and to be globally competitive; and
- Evaluation of the impact and effectiveness of the state's existing workforce system.

Again the study charge provided the Department of Commerce, along with a consultant, was responsible for a large portion of the preparatory work and implementation of the Workforce Congress. Specifically, the department, in consultation with the committee:

- Organized the Workforce Congress;
- Compiled Workforce Congress participant invitation lists;
- Drafted and distributed Workforce Congress invitations;
- Established a Workforce Congress date and location; and
- Prepared the agenda for the Workforce Congress.

Focus Group Activities

The committee, with the assistance of the Department of Commerce, held five half-day focus groups--four for business leaders and one for young people. The business leader focus groups were held in Grand Forks, West Fargo, Minot, and Dickinson; the focus group for young people was held in Jamestown. The committee followed the same basic format for the four business leader focus groups and a slightly modified format for the young people focus group.

The basic format of the focus groups was:

- Welcome and opening comments from the committee chairman and the Commissioner of Commerce;
- Introduction of two committee consultants who facilitated the focus groups;
- Group interview of invited participants;
- Review of 2007 legislative workforce initiatives;
- Summary of North Dakota's workforce situation;
- Review of prefocus group surveys;
- Breakout sessions; and
- Closing remarks.

At each of the five focus groups, committee members sat at round tables with the invited participants--either business leaders or young people. The two consultants worked together to facilitate each of the focus groups, using a computer presentation to assist in presenting information throughout each focus group.

Following the welcome and introductions, the consultants conducted a group interview that included gathering information regarding the focus group participants. Additionally, the consultants reviewed the background of the workforce system study and its predecessor--the business climate study--briefly reviewed the 2007 legislative workforce initiatives, reviewed the steps that will be taken during the workforce system study, reviewed data relating to the state's current workforce situation, provided details regarding the results of the prefocus group survey completed by business leaders who were invited to attend the focus groups, and conducted two breakout sessions.

The first breakout session was made up of four exercises. The participants at each table were asked to discuss and record how the participants would like to change behavior of employers, workers, education, and government. The facilitators recorded the results reported from each table for each of these four classes for which changed behavior is sought. Upon completion of this breakout session, participants voted on which of the recorded behavioral changes are most important in addressing the state's workforce challenges.

For the second breakout session, the participants changed the tables at which they were seated. The consultants identified the items participants rated as the most desired behavioral changes. Each table was requested to determine what actions should be taken

and by whom these actions should be taken to lead to these identified behavioral changes. Specifically, the participants at the tables were charged with identifying and recording what state policies or legislation would accomplish the desired changes. Upon each table reporting an identified desired action, the participants again voted to identify the top-rated actions needed to address the state's workforce challenges.

The agenda for the focus group for young people varied slightly from the other four focus groups in that a single breakout session was held. The breakout session was made up of four exercises. The participants at each table were asked to discuss and record how the participants would like to:

1. Change the actions of employers so they would better meet the needs of youth;
2. Change the actions of young adults so they would stay in North Dakota;
3. Change the actions of schools so they promote retention of young talent; and
4. Change the actions of government so it meets the state's workforce challenges.

The facilitators recorded the results reported from each table for each of these four classes for which changed action was sought. Upon completion of this breakout session, participants voted on which of the recorded changes were most important in addressing the state's workforce challenges.

Workforce Congress Activities

Following the five focus groups, the committee and Department of Commerce held and participated in the Workforce Congress at the State Capitol on April 10, 2008. The invitation list for this event included individuals invited to and individuals who attended the four business leader focus groups. Participants received a report on the activities of the focus groups, identified methods to enhance the state's workforce system in order to be well-positioned to participate in a knowledge-driven economy and to be globally competitive, and evaluated the impact and effectiveness of the state's existing workforce system.

The meeting began in the House chamber, broke into small groups that met in four meeting rooms in the State Capitol, and then reconvened in the House chamber. Workforce Congress participants included private business leaders, economic developers, educators, and young professionals.

The committee's two consultants worked together to facilitate the Workforce Congress portions in the House chamber. The committee used the following basic format for the Workforce Congress:

- Welcome and opening comments from the committee chairman, committee vice chairman, the Governor, and the Commissioner of Commerce.
- Consultants' report regarding an overview of the workforce system study process and destination, process and expectations for the Workforce Congress, key economic and workforce facts about North Dakota, and highlights and insights from the four business leader focus groups and the young people focus group.
- Break out into four groups, each assigned to address desired changes in the behavior of employers, individuals, educators, or government in order to have a positive effect on North Dakota's ability to respond to workforce challenges.
- Reconvene to report on the activities of the four breakout groups.

Consultants' Report

The consultants reported on the results of the prefocus group survey of business leaders, indicating the survey highlights and lowlights included:

- People like where they live--90 percent rated where they live as excellent/good;
- Good place to raise family--97 percent rated excellent/good (drops to 69 percent for "fun place");
- Good job satisfaction--96 percent rated complete/a lot of satisfaction with job;
- Quality of workforce rated high--83 percent rated as excellent/good;
- Good place to get an education--87 percent rated excellent/good;
- Lower rating as a place to find a job--44 percent fair/poor rating;
- Low rating in assistance available to employers for finding workers--under 30 percent rated excellent/good;
- Low rating for assistance available to employers for upgrading worker skills--only 28 percent excellent/good (15 percent don't know);
- College graduates can easily find a good-paying job here--72 percent disagree with statement; and
- Critical issues often cited are low wages, losing skilled youth, and replacement of aging Baby Boomers.

The consultants reported the most common responses to the focus group breakout activities were:

- Employers should change:
  Workplace culture to be more attractive to new generation of workers;

  Create higher-wage jobs;

  Reach out to education--form partnerships;

  Promote own industry--in- and out-of-state; and

  Invest in own workers--create career ladders--provide continuing education aimed at new jobs.
- Individuals should change:
  Take initiative--lifelong learning--engagement in problem-solving in workplace;

  Take advantage of specific skills advancement opportunities of two-year or less technical programs;

  Make informed decisions about North Dakota careers based on solid labor market information;

  Stay in state--keep skills here; and

Move back if you left--bring skills back.

- Schools should change:
  Reach out to employers--form partnerships--learn realities of today's workplaces;

  Create demand-driven courses and flexible delivery structures;

  Promote two-year technical programs on a level playing field with four-year programs;

  Provide more intensive career information; and

  Promote the state to students--fairly present our state's opportunities.
- Government should change:
  Market the state more aggressively--in- and out-of-state;

  Create state-level point of responsibility for providing career information to citizens and students;

  Target critical skills gaps and provide incentives to keep them here or bring them in;

  Create an incentive for upgrading skills of current workforce to prepare for new jobs; and

  Create incentives for aging Baby Boomers to employ their skills in new ways and acquire new skills.

Breakout Groups

The Workforce Congress participants were divided into four groups and assigned to meet in one of four meeting rooms to address the four associated behavioral changes.

Reports From Breakout Groups

Following the breakout groups, the Workforce Congress participants reconvened in the House chamber and reported each small group's top three changes in behavior and also reported a fictional headline from *The Wall Street Journal* in the year 2013 reflecting North Dakota's success in meeting its workforce needs.

The breakout group addressing changes in the behavior of education reported these items:

1. Align higher education with growth sectors of the economy.
2. Provide more and earlier career awareness education and information to students and parents.
3. Provide rapid response of higher education to "hot needs."

The breakout group addressing changes in the behavior of individuals reported these items:

1. Establish a statewide structure for a comprehensive curriculum for career exploration and decisionmaking.
2. Provide more affordable higher education for both recent high school graduates and adults.
3. Keep North Dakotans in the state through alignment of educational standards for moving throughout the P-16 system.

The breakout group addressing changes in the behavior of employers reported these items:

1. Create tax incentives for automation and innovation tied to increases in productivity.
2. Create an aggressive statewide career awareness initiative.
3. Support employer-sponsored school-to-work programs to engage non-college-bound youth.

The breakout group addressing changes in the behavior of government reported these items:

1. Improve career advising and training by getting industry involved in the process with education and by delivering at the community level.
2. Provide tuition loan programs for all types of workers so all people can access training.
3. Expand and continue existing programs and pilot programs that have proven to be successful.

Closing Remarks

Following the reports of the breakout groups, the Workforce Congress participants commented on the day's activities, including:

- There was a recognized need for government to support innovation, technology, and automation.
- Addressing career specialists and career awareness does not have to start fresh as there are examples of successful programs. Additionally, there was discussion that the market works best when all involved have good information and, on that same premise, students will make good decisions if they have the right information.
- There was general support that the committee and the consultants should consider all of the ideas of the breakout groups because there were great ideas that did not make the top three issues reported out of the four groups.

Consultants' Report

An executive summary of the consultants' final report was presented to the committee at a joint meeting of the Workforce Committee, Education Committee, and Higher Education Committee. The report included an overview of:

- The state's achievements relating to workforce;
- The state's challenges relating to workforce;
- The background of and procedure followed in conducting the Workforce Committee's workforce study;
- The five themes that arose through the course of the workforce study focus groups and Workforce Congress;
- The policy decisions of investment, innovation, and impact, which should be considered as part of the policy evaluation; and
- Examples of initiatives that could be enacted to address the five identified priority areas.

The consultants identified the following top three priorities for each group as prioritized by the Workforce Congress:

Employers

1. Tax incentives for employer automation and innovation tied to productivity increases;
2. Employer-sponsored school-to-work initiative to reach out and engage non-college-bound youth; and
3. Aggressive statewide career awareness initiative.

Employees

1. More affordable higher education in North Dakota through low tuition strategies and strategies for tuition reimbursement (without creating new bureaucracies);
2. Statewide structure for a comprehensive curriculum for career exploration and decision-making; and
3. Alignment of educational standards for moving throughout the P-16 system, including promotion of two-year opportunities and strengthened articulation agreements.

Schools

1. Higher education funding aligned with growth sectors of the economy;
2. Early career awareness education aimed at parents and children; and
3. Rapid response mechanism for "hot needs" of higher education--streamlined "minuteman" process for meeting needs in a timely manner.

Government

1. Bank of North Dakota tuition loan program for all demographics (traditional and nontraditional students);
2. Career advising and training initiative at the community level---involvement of industry leaders, education leaders, and teachers to increase awareness; and
3. Leadership in expanding timeframes of existing, successful pilot programs that are already in place in North Dakota.

The consultants reported that in analyzing the suggestions gathered from the focus groups and the priorities defined at the Workforce Congress, the information clustered into five policy idea suites. In each suite the aim was to define a common goal linked to comments from North Dakotans with policy options that work to collectively promote positive change in the behavior of employers, employees, schools, and government.

The five policy idea suites that resulted from the focus groups and Workforce Congress and the corresponding recommendations of the consultants were:

1. Retain talent - The consultants identified the following immediate-term and long-term recommendations:
   a. Immediate-term - More broadly scaled and aggressively marketed Operation Intern through increased public and private support; and tax credits for college graduates who remain and work in North Dakota.
   b. Long-term - Structure for tuition reimbursement for identified high-priority skills gaps.
2. Attract talent - The consultants identified the following immediate-term and long-term recommendations:
   a. Immediate-term - Targeting of out-of-state talent with ties to North Dakota which includes a special website and an aggressive and timely catch-and-referral mechanism; and waiver of state income tax for high-priority talent attracted to the state.
   b. Long-term - Structure for tuition reimbursement for identified high-priority skills gaps.
3. Incentivize employer productivity, innovation, and entrepreneurship - The consultants identified the following immediate-term and long-term recommendations:
   a. Immediate-term - Technology investment tax credit and low interest loan program to encourage employer technology investments; and a study that identifies key regional business clusters and associated investment priorities for increased productivity.
   b. Long-term - Prairie Innovation Zone structure for ongoing business-education collaborations for innovation, research, and technology transfer.
4. Connect education and employers - The consultants identified the following immediate-term and long-term recommendations:
   a. Immediate-term - "Work Ready" work ethic certification for high school students as defined by employers; "fast track" approval process for new courses and curricula tied to emerging employer needs; and expanded statewide internship program that prioritizes STEM disciplines (science, technology, engineering, and mathematics).
   b. Long-term - Core curriculum for high school graduates tied to employer demand--expanded to related idea of "core tech" curriculum for higher education; work ethic certification in high school connected to broader framework for career track identification and resume building--include high school internships, community service, and other opportunities that expose students to the meaning of working and living in North Dakota; and social network-based models to create grassroots engagement of diverse groups in North Dakota regions.
5. Promote higher education - The consultants identified the following immediate-term and long-term recommendations:
   a. Immediate-term - Stipend for students to complete two-year postsecondary "core tech" curriculum; and tax credit structure for state residents who pursue higher education in state universities.

b. Long-term - Structure for Lifetime Education Accounts; and "Seniors to Sophomores" program tied directly to established core high school standards and postsecondary "core tech" standards.

Information Provided to Committee

Throughout the course of performing the workforce system study, the committee requested, received, and reviewed information relating to workforce issues. The committee considered this information in making its recommendations.

Centers of Excellence

The committee received a status report on the centers of excellence program, including a review of the status of the three centers legislatively awarded funding in 2003, the centers awarded funding under the competitive application process, and the status of upcoming awards.

Governor's Workforce Summit

The study directive required the focus group schedules and activities to take into consideration the workforce study activities of the Department of Commerce. The specific activity the department worked on during the interim was the Governor's Workforce Summit, which took place October 11-12, 2007. Committee members were invited to attend this event.

The committee received a report on the document "State of the North Dakota Workforce Report," which was reported at the summit. In looking at the state of North Dakota's workforce, economic development and the workforce can be considered Siamese twins. North Dakota has a tight labor market, which is in part related to demographics.

The Commissioner of Commerce testified the 2007 Governor's Workforce Summit served as an effective kickoff for the interim committee's workforce system study. A high point of the summit included the industry panel as well as the breakout sessions.

Committee members who attended the summit testified that with high school and higher education annual graduations of approximately 6,000 students, it will be very difficult for the state to fill the state's approximately 10,000 open positions. However, one way to address the workforce needs of the state would be to expand the pool of possible workforce, such as focusing on retirees reentering the workforce and disabled individuals participating in the workforce. Although the workforce needs being experienced by North Dakota are similar to what is going on nationwide, North Dakota has a very high labor force participation rate and this will be a challenge as the state tries to increase its workforce participation.

Additionally, a committee member who attended the summit raised the point that there has been a paradigm shift. In the past, the state has invested resources in seeking new businesses and has been successful in recruiting and retaining businesses, but now the state needs to focus on attracting and retaining workers. To address this current need, it will be necessary to look at the existing population and what can be done to get workers in jobs. Untapped sources of workers may include senior citizens and recipients of public benefits as well as individuals who have been in the prison population. In addition to tapping current residents of the state, it will be necessary to attract workers to the state.

A representative of the Department of Commerce testified the department has considered recruiting workers from markets in the country that have high unemployment; however, in taking this step, it is very important that the skills of these members of the unemployed group be aligned with the workforce needs in the state.

Southeast Quadrant

The committee held a meeting in Gwinner and received testimony from representatives of Bobcat, the State College of Science, and organized labor. Additionally, committee members ate lunch with the senior class of North Sargent High School and informally discussed workforce and education issues with the students.

The committee received testimony from representatives of Bobcat which included an overview of plant activities, such as the physical operations of the Gwinner plant, the organizational structure of the Gwinner plant, the workload of the Gwinner plant, and the level of employment at the Gwinner plant; workforce experience; and workforce projections.

A representative of Bobcat testified some of the major challenges faced by Bobcat include how to better support its workers with issues such as housing. In the southeast region of the state there are no multilisting services for housing, and there is a shortage of available housing. Additionally, child care is a challenge for workers for a variety of reasons, including the plant's 24 hours a day 7 days a week operation and the fact the workforce resides over such a broad area.

Representatives of the State College of Science provided the committee with information regarding the southeast quadrant training program, college outreach, and career resource support programs. The State College of Science is responsible for workforce development and workforce training, with the four academic clusters focused on manufacturing, construction, transportation, and allied health professions in addition to emerging clusters, such as nanoscience, which is also included in the school's academic framework.

A representative of the State College of Science testified the school seeks a seamless process from preschool through higher education. One step that could be taken to assist in this seamless process would be an increased ratio of career counselors to students. North Dakota rates well for graduating high school seniors; however, the state does not do as well in keeping these students in higher education through graduation.

The committee received testimony from a representative of the State College of Science that because career and technical education costs are higher than the typical baccalaureate degree, the funding for

these programs should reflect this reality. The testimony was supportive of using existing mechanisms to address the state's workforce needs, including use of the Higher Education Roundtable.

The committee received testimony from a representative of organized labor. The testimony indicated that in addition to job security, the two most important issues in contract renegotiations are health care and wages.

Joint Meeting

The committee held a joint meeting with the Education Committee and the Higher Education Committee. The three committee chairmen recognized there was overlap in the committee charges and reviewed the activities of each of the committees. Based on committee charges, the chairmen proposed the committees distribute workforce issues as follows:

Workforce Issue Distribution Proposal
Education Committee
Career counselors • Committee discussion could address several related issues, including curriculum for career exploration; qualifications of career counselors; school-to-work, internships, apprenticeships, and clinical opportunities; and career awareness for students, parents, and teachers.
Student assessment
Tiered diplomas
Regional education associations
Data collection
Preparation for higher education and the workforce
Curriculum and graduation requirements
(These topics are also being addressed by the North Dakota Commission on Education Improvement.)
Higher Education Committee
Tuition formula • Committee discussion could address several related issues, including state and institution obligations, in-state and out-of-state tuition rates, tuition relationship to courses of study, and affordability.
Rapid response and streamline process to respond to workforce needs
Funding formula • Align with growth sectors • Equity relating to technical programs • Equity relating to nontraditional students
Data collection • Postgraduation location and job • Completion/retention rates
Streamline high school to higher education
Out-of-state recruitment
Internships, apprenticeships, and clinical opportunities (at the institutional level)
Access (rural)
Strengthen technical education
Workforce Committee
Student loans (Bank of North Dakota)
Lifetime education accounts
Tax • Employer automation • Attraction and retention of workers • Internships and apprenticeships • Student loan debt
Strengthen link between education and employment
Attraction and retention of students and workers
Strengthen Department of Commerce programs • Ambassador program • Operation Intern • Attraction and retention of workers
Prairie Innovation Zone program and economic clusters

The joint meeting included two panel discussions. The industry panel was composed of representatives of the state's five targeted industries as well as a representative of the health care sector and a representative of the North Dakota Chamber of Commerce. The education panel was composed of representatives of higher education, kindergarten through grade 12, career and technical education, and distance education.

A representative of the tourism sector testified one of the biggest issues faced by businesses is dealing with how to simultaneously recruit, train, and retrain, and

retain a workforce. These issues may be appropriately addressed through strengthening the linkage between education and jobs.

The committee received testimony in support of implementing a proficiency-based education system so a student's diploma has more meaning and is based upon more assessments. Panelists recognized the importance of ensuring high school students have the right education going into higher education and once again when they graduate with a degree from higher education and go into the workforce.

An industry panelist testified several of the solutions to the workforce issues could be found in the recommendations of the P-16 task force. For example, the state would benefit from focusing on the career areas that are experiencing the highest growth in North Dakota, especially through providing career and technical education.

The committee received testimony that the issue of credentialing different professions has been an ongoing battle with the Legislative Assembly. Allowing a profession to be credentialed is meaningful to the workers in that field. Professional challenges include clinical requirements related to education as well as the limited availability of clinical opportunities.

The committee received conflicting testimony from panelists. Some panelists testified low wages are a barrier in attracting and retaining a workforce and other panelists testified wages are not a barrier.

The committee received testimony that tax incentives for new graduates may help in attracting and retaining a workforce; however, the committee received conflicting testimony in support of providing tax incentives to businesses instead of employees to maximize the impact of the incentive.

A panelist testified in support of modifying the current higher education funding system. The current system was perceived as a disincentive in that the state appropriates money to the institutions of higher education based on the number of full-time students on campus. The appropriation formula should be changed to support and recognize universities that reach out to rural North Dakota and to nontraditional students who may not be full-time students.

The testimony received regarding internships was generally supportive; however, the issue was raised that there are some businesses for which it is not feasible to have an internship program.

The facilitator of the industry panel summarized the discussion into the following four main topics:

1. North Dakota is a skilled economy and is underinvested in skills training.
2. There is a lack of communication in getting the message out. People need to know more about career and education opportunities.
3. There is support for implementing competency assessments.
4. There is a new work ethic that needs to be recognized.

The education panelists testified the education system is more comfortable than people realize when it comes to addressing the education system's role in the workforce, although some institutions are more comfortable than others. The Higher Education Roundtable was suggested as the vehicle that could be used to move these workforce concerns forward. Additionally, testimony was received in support of revising the higher education funding model to provide higher education institutions greater flexibility and the ability to respond more immediately to the workforce needs.

The testimony recognized there is competition for students within the state; therefore, the institutions of higher education need to look out of state. There has been success in keeping out-of-state students in North Dakota following graduation. Realistically, if the state is going to fill 14,000 open jobs, the state is going to need 14,000 individuals from out of state. When it comes to funding and course offerings, educators are professionals and they understand the reward system. Under the current funding system, institutions of higher education are enrollment-driven.

The committee received testimony in support of and in opposition to using early identification of student skills and interests to help address the state's workforce needs. However, there was support for taking steps to better inform students of their education and employment opportunities.

The committee received testimony that possible ways to address the state's workforce needs include offering students dual credit for coursework, providing students opportunities for earning credit for prior learning, and also strengthening the state's apprenticeship program. In addition, lifelong learning and adult education are important components of the state's workforce issues.

The committee received testimony the state will need financial assistance that better accommodates nontraditional students. The current financial assistance system works well for traditional students but not for nontraditional students. Additionally, accessibility of programs will need to be addressed to better accommodate lifelong learning and adult education; this might best be accomplished through regional education associations.

A representative of a two-year college testified there are examples of industry-education cooperative programs that have worked well; however, not all businesses are worldwide in scope and have the resources necessary to implement a program on the same scale as larger businesses. For example, individual trucking businesses may not have the necessary size to start an industry program, but the truck driving industry as a whole may be able to work together to recognize the economies of scale necessary to start up a program.

Higher Education

Throughout the interim the committee requested and received information from representatives of the North Dakota University System.

The committee received information regarding the educational demographics of the state and the region as well as American College Test (ACT) data. The North Dakota University System is aware of the decreasing

number of high school graduates in the state and is looking to attract two-year university graduates who are transfer students from other states.

Testimony was received that to keep educated young people in the state, the students need to have the opportunity in the state to find good jobs with good pay. In attempting to measure the outcome of the state's workforce actions, retention is a good example of how to track these actions. Additionally, retention of students of institutions of higher education is related to how prepared students are as they enter the higher education system.

The committee received testimony that the North Dakota University System recognizes the need to be proactive and careful to not just react to change. The Higher Education Roundtable has been instrumental in making the University System more flexible and more entrepreneurial.

Local Developers

In addition to inviting local developers to participate in the focus group and Workforce Congress activities, the committee requested and received testimony regarding workforce needs from local economic developers.

The committee received testimony that communities are initiating local and regional programs and businesses are initiating programs to address workforce needs, including training of nurses, internship programs, nationally and regionally competitive wages, alumni lists, local and out-of-state job fairs, succession planning, and extensive training in all positions.

One step that needs to be taken is systemic marketing because new graduates face jobs requiring three years to five years of experience, and oftentimes this is the reason the communities are losing their graduates of institutions of higher education.

Economic developers are in a unique position. Although communities need to diversify, this is a tough thing to do because the developers cannot in good conscience recruit businesses that will not be able to fill workforce needs.

Consideration

Child Income Tax Credit Bill Draft

The committee considered, but does not recommend, a bill draft that would have provided an income tax child credit. The bill draft was intended to respond to issues raised regarding the cost of child care. The credit would have applied to all families of children under the age of 18, regardless of whether there were verified child care expenses.

Recommendations

Retirement Issues

The committee recognized that to meet workforce needs, one of the required actions is maximizing employment participation of people already living in the state. The committee received demographic data reflecting an aging workforce, which will result in increases in the number of workers retiring and leaving the workforce. Testimony received in committee and at the Governor's Workforce Summit indicated one way to increase the number of retirement age workers retained in the workforce is to design more flexible work environments. Although generally a private sector matter best addressed by employers, as an employer the state plays a role in creating flexible working environments for state employees.

The committee recommends Senate Bill No. 2061 to direct Human Resource Management Services, a division of the Office of Management and Budget, to study how to retain state workers who are nearing retirement.

Department of Commerce - Students

The committee recommends House Bill No. 1065 to provide funding for the Department of Commerce Operation Intern program and direct the department to administer a program to market North Dakota higher education opportunities to out-of-state students.

Students and Graduates

The committee recognized there is a need for a seamless package to address immediate workforce needs as well as something to address future workforce needs. The committee received data indicating in the near future, the number of North Dakota high school graduates will be decreasing sharply.

Committee members discussed a variety of approaches to increase the number of recent college graduates remaining in, returning to, or moving to North Dakota, including revising the Bank of North Dakota's student loan program; providing tax breaks for student loans; providing student loan forgiveness for identified fields of employment; and decreasing college tuition.

The committee recommends Senate Bill No. 2062 to provide a phased-in college tuition grant program for qualified North Dakota high school graduates beginning with the high school graduating class of 2014 and provide an earned income tax deduction for recent college graduates. The bill is designed so the income tax deduction is effective immediately and remains in effect until the college tuition grant program becomes effective.

Tax Credits for Automation and Innovation

The committee received testimony that one way to address workforce challenges is for businesses to better use the existing workforce by doing more with fewer employees. If employers are unable to recruit for all the open positions, then employers need to better use the current workforce through higher productivity. The committee received information regarding steps North Dakota and other states have taken to incentivize automation and innovation by businesses.

The committee recommends House Bill No. 1066 to provide three types of tax credits for taxpayers that are primary sector businesses--a credit for purchases of manufacturing machinery and equipment for the purpose of automating manufacturing processes, a credit for qualified expenditures necessary for implementing lean manufacturing, and a credit for qualified research expenses.

Workforce System Study

The committee recognized that, conceptually, the workforce needs in the state can be characterized as a "pipeline" issue. In addressing this workforce supply issue, state actors need to evaluate the workforce system on a macro-level and to consider what roles are appropriate for the state to take in dealing with these supply issues.

The committee recommends Senate Concurrent Resolution No. 4002 to provide for a Legislative Council study of the state's workforce system, the feasibility and desirability of enacting legislation to address the issues identified in the 2007-08 interim Workforce Committee's consultants' report, and the implementation of workforce initiatives enacted by the 61st Legislative Assembly.

Immigration Reform Resolution

The committee recommends Senate Concurrent Resolution No. 4003 to express support for the development of a balanced national immigration policy and urge Congress to work to develop an immigration policy that protects and preserves the safety and interests of the United States and its citizens while also recognizing the needs of businesses to have a stable and legal supply of workers.

JOB DEVELOPMENT AUTHORITY STUDY

Legislative Background

As introduced, Senate Bill No. 2149 (2007) would have expanded the authority of county job development authorities (JDAs) to include taking equity positions in, providing loans to, or using other innovative financing mechanisms to provide capital for new or expanding businesses in this state or for businesses relocating to this state. Before enactment, the bill was amended to include city JDAs and to provide for the Legislative Council study.

The legislative history indicates the bill was introduced to address a letter opinion of the Attorney General dated May 9, 2007, opining a county JDA lacks express or implied statutory authority to take an equity position in a private company.

The minutes of the Senate Political Subdivisions Committee hearing on Senate Bill No. 2149 indicate the study was added to the bill in recognition that over the years a broad range of economic development tools have been added to the tool chest, and perhaps some of these tools are no longer needed and could be eliminated. Specifically, the committee recognized the low rate of unemployment and questioned whether there is still a need to create more jobs in the state.

State Law

County Job Development Authorities

North Dakota Century Code Chapter 11-11.1 authorizes counties to create JDAs, to create joint JDAs, and to contract with industrial development organizations to perform the functions of JDAs or joint JDAs. Chapter 11-11.1 was enacted in 1985. Section 11-11.1-03 provides the objective of a JDA or joint JDA is to use its financial and other resources to encourage and assist in the development of employment and promotion of tourism within the county or counties.

City Job Development Authorities

North Dakota Century Code Chapter 40-57.4 authorizes cities to create city JDAs, to create joint JDAs, and to contract with industrial development organizations to perform the functions of city JDAs or joint JDAs. Chapter 40-57.4 was enacted in 1987. Section 40-57.4-03 provides the objective of a city JDA is to use its financial and other resources to encourage and assist in the development of employment within the city.

Legislative History

The legislative history of the 1985 legislation creating the county JDA law indicates supporters of the legislation testified:

- County JDAs would assist rural communities to diversify their economic bases so the communities would be less dependent on relying on agriculture as the base of the communities' economies.
- The law would allow counties to levy a tax to provide full-time economic development programs to provide day-to-day activities instead of relying on "bird in the hand" activities.
- The law would allow counties to levy a tax to contract with existing local economic development organizations to provide full-time economic development programs, thereby avoiding duplication of services.
- New jobs were necessary to keep youth in the communities.

The legislative history of the 1987 legislation creating the city JDA law indicates supporters of the legislation testified:

- The law would allow cities to levy a tax for a city JDA without burdening the rural communities in the county.
- The law would allow cities to levy a tax to pay full-time, professional economic developers.

Since the enactment of the JDA laws, the general trend has been to expand the powers of the authorities. For example:

- House Bill No. 1177 (1991) authorized city and county JDAs to loan, grant, or convey any funds or property held by the authorities to carry into effect the objective of the authorities.
- Senate Bill No. 2021 (1993) authorized city and county JDAs to guarantee loans or make other financial commitments to enhance economic development.
- House Bill No. 1483 (1993) authorized the creation of joint county JDAs and the creation of economic growth districts in counties that are part of a joint JDA.
- Senate Bill No. 2537 (1993) authorized county JDAs to accept and expend money from any source.
- Senate Bill No. 2353 (1995) authorized the creation of joint city JDAs.

- Senate Bill No. 2173 (2003) expanded the objective and taxing authority of county JDAs to include promotion of tourism.
- Senate Bill No. 2149 (2007) authorized city and county JDAs to take equity positions in, provide loans to, or use other innovative financing mechanisms to provide capital for new or expanding businesses.

Testimony

The committee received reports from representatives of the North Dakota League of Cities and the North Dakota Association of Counties. A general survey of city and county JDAs was conducted requesting general information regarding funding and financing mechanisms. The information from the general survey indicated each community with a JDA has established a funding mechanism that is designed for that particular JDA. Job development authority funding sources include local sales tax, local levy of up to four mills, equity positions, and loan and lease payments. As in funding, the financing mechanisms used by JDAs vary depending on the needs of the community. Examples of JDA financing mechanisms include loans, grants, property conveyances, property tax exemptions, building or property leases or rentals, equity positions, and PACE interest buydowns.

The North Dakota League of Cities and the North Dakota Association of Counties performed a second, more specific survey of city and county JDAs requesting specific information regarding whether the JDAs had ever supported economic development projects through the taking of an equity position. Generally, most JDAs have never used an equity position as a financing tool. Of the JDAs that had taken an equity position, it is a financing tool that is rarely used. The following JDAs reported having taken an equity position one or more times as a form of economic development:

- Devils Lake Development Corporation.
- Hazen Community Development.
- Mayville-Portland Economic Development Corporation.
- Wishek Job Development Authority.
- Jamestown/Stutsman County Development.
- McKenzie County Job Development Authority.
- Towner County Economic Development Corporation.
- Walsh County Job Development Authority.

The survey results indicated the JDAs that had taken equity positions employed the same due diligence that they would with providing a loan or other incentive. Typically, if a JDA took an equity position, the JDA relied heavily on the due diligence of the major contributor, such as the Bank of North Dakota or the North Dakota Development Fund.

The survey requested information regarding what action the JDAs took if a business in which the JDA had an equity position failed and also what plans JDAs took to extract themselves from equity positions. The responses to these questions varied according to the specific terms of the equity agreement. Some JDAs that took equity positions included clawback provisions in the financing agreement and some did not. Typically, a JDA's equity position is only one part of a larger economic development package that includes participation by financial institutions.

Representatives of city and county JDAs testified in support of the current JDA laws, indicating the laws are flexible enough to allow the JDAs to design organizations that meet the needs of the community. Testimony was received that JDAs are accountable to the local communities for how the JDAs use local funds.

The committee did receive testimony the statutory maximum of four mills for funding JDAs has the result of limiting JDA funding in smaller communities. However, even this limited funding has impacted positively economic development services in these small communities. Testimony was received that the JDA in a smaller community is often partnered with other economic development organizations.

The committee discussed whether taking an equity position is an appropriate activity for JDAs. The committee recognized that although some JDAs were taking equity positions before the law was amended to allow for this, it may be several years before there is any recognizable increase in JDAs using equity positions as a form of financing. When there is more data on the success or failure of taking an equity position, it is likely that only failed positions will receive any scrutiny.

Conclusion

The committee does not make any recommendation relating to the job development authority study.

POPULATION STUDY

Population and Demographic Statistics

North Dakota

According to United States Census Bureau data, North Dakota's estimated population on July 1, 2006, was 635,867, compared to the year 2000 population of 642,200, a percentage change of -1.0 percent. North Dakota is ranked 48th in national population with the District of Columbia, Vermont, and Wyoming having smaller populations. The census data indicates the state's demographics include 14.7 percent of the population is aged 65 or older; 83.9 percent of the population has graduated from high school; and 22 percent of the population has earned a bachelor's degree or higher.

Population Initiatives

In addition to a wide variety of organizations that have addressed population growth in the state and region, there have been several population growth initiatives. Initiatives addressing the issue of population growth include the Great Plains Population Symposium Project, the Saving North Dakota Roundtable, the New Economy Initiative, and the Youth Initiative Committee in support of 2002 initiated statutory 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 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 aged 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 the Governor to discuss these major topics.

New Economy Initiative

The New Economy Initiative was a public-private initiative coordinated by the Greater North Dakota Association beginning in 2000. The goals of the initiative were to mobilize North Dakotans to develop and implement solutions to some of the problems plaguing the state's business climate. The initiative worked through the creation of action teams and industry clusters.

Youth Initiative Committee and Initiated Statutory Measure No. 3

Initiated statutory measure No. 3 was rejected by voters on November 5, 2002. The measure, 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 the age of 30 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 aged 21 through 29 for up to five years.

Testimony and Committee Considerations

The committee conducted the population study as part of the workforce system study and also considered relevant reports received by the committee. The workforce system study focus group activities specifically addressed the issue of how to attract and retain North Dakota's workforce.

Recommendations

The committee recommendations relating to the population study are addressed under **WORKFORCE SYSTEM STUDY**, **Recommendations**.

NORTH DAKOTA UNIVERSITY SYSTEM - WORKFORCE NEEDS STUDY

Background

The North Dakota University System consists of 11 higher education institutions under the control of the State Board of Higher Education. Of the 11 institutions, 2 are doctoral-granting institutions, 2 are master's-granting institutions, 2 are universities that offer baccalaureate degrees, and 5 are colleges that offer associate's and technical degrees. Each institution is unique in its mission to serve the people of North Dakota. The University System reported a total degree credit headcount enrollment of 42,237 students and a total degree credit full-time equivalent enrollment of 35,373 students in the fall 2006 enrollment report.

Strategic Planning

Long-Term Financing Plan and Resource Allocation Model

The 1999-2000 Higher Education Roundtable recommended the State Board of Higher Education and the chancellor develop a long-term financing plan and 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 board approved changes to the long-term financing plan and resource allocation model in May 2006. The following is a description of the current long-term financing plan and resource allocation model:

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.

The incentive funding component of the long-term financing plan includes funding for the State Board of Higher Education to support state and system priorities consistent with the goals of the Higher Education Roundtable. The State Board of Higher Education goal for incentive funding is to have funding equivalent to 2 percent of the total University System state general fund appropriation.

The capital asset funding component of the long-term financing plan provides funding to each of the higher education institutions for maintenance and replacement of facilities and infrastructure. The State Board of Higher Education goal for capital asset funding is for each of the institutions to phasein full funding of the Office of Management and Budget buildings and infrastructure formula over a 10-year period (by the 2013-15 biennium) and to address the current deferred maintenance backlog over approximately a 14-year period (by the 2015-17 biennium). The funding provided to each of the

institutions would be left to the discretion of the institution with appropriate approvals by the State Board of Higher Education for projects greater than $100,000. Institutions would be given the authority to allocate funds for repair and replacement priorities for both deferred maintenance and regular repair and replacement projects as determined by the institution. Institutions are allowed to carry unspent capital asset funding from one biennium to the next in order to complete the projects started in one biennium but not completed until the next and to accumulate funds to complete large projects that require multiyear funding. The capital asset funding component will be applied to new state buildings built on campuses; however, no new operating funds will be added to the base operating budget for operating costs if the operating base is already at the benchmark target.

Performance and Accountability Report

North Dakota Century Code Section 15-10-14.2 requires the University System to provide an annual performance and accountability report regarding performance and progress toward the goals outlined in the University System strategic plan and related accountability measures. Section 17 of House Bill No. 1003 (2007) provides that the performance and accountability report as required by 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. House Bill No. 1003 identifies these performance and accountability measures:

1. Education excellence, including:
   a. Student performance on nationally recognized examinations in their major fields compared to the national averages.
   b. First-time licensure pass rates compared to other states.
   c. Alumni-reported and student-reported satisfaction with preparation in selected major, acquisition of specific skills, and technology knowledge and abilities.
   d. Employer-reported satisfaction with preparation of recently hired graduates.
   e. Biennial report on employee satisfaction relating to the University System and local institutions.
   f. Student graduation and retention rates.
2. Economic development, including:
   a. Enrollment in entrepreneurship courses and the number of graduates of entrepreneurship programs.
   b. Percentage of University System graduates obtaining employment appropriate to their education in the state.
   c. Number of businesses and employees in the region receiving training.
3. Student access, including number and proportion of enrollments in courses offered by nontraditional methods.
4. Student affordability, including:
   a. Tuition and fees on a per student basis compared to the regional average.
   b. Tuition and fees as a percentage of median North Dakota household income.
   c. Cost per student in terms of general fund appropriations and total University System funding.
   d. Per capita general fund appropriations for higher education.
   e. State general fund appropriation levels for University System institutions compared to peer institutions general fund appropriation levels.
5. Financial operations, including:
   a. Cost per student and percentage distribution by major function.
   b. Ratio measuring the funding derived from operating and contributed income compared to total University System funding.
   c. Ratio measuring the amount of expendable net assets as compared to the amount of long-term debt.
   d. Research expenditures in proportion to the amount of revenue generated by research activity and funding received for research activity.
   e. Ratio measuring the amount of expendable fund balances divided by total expenditures and mandatory transfers.
   f. Ratio measuring net total revenues divided by total current revenues.

The State Board of Higher Education has adopted 9 performance and accountability measures, in addition to the 21 measures specified in House Bill No. 1003, to provide guidance in establishing effective policy for the 11 University System institutions. The following is a summary of the measures adopted by the board:

1. Workforce training information, including levels of satisfaction with training events as reflected in information systematically gathered from employers and employees receiving training.
2. Noncompleters satisfaction - Levels of satisfaction and reasons for noncompletion as reflected in a survey of individuals who have not completed their program or degree.
3. Student goals - Levels and trends in the number of students achieving goals and the institution meeting the defined needs and goals as expressed by students.
4. Levels of satisfaction with responsiveness as reflected through responses to evaluations of companies receiving training.
5. Student participation - Levels and trends in rates of participation of:
   a. Recent high school graduates and nontraditional students.
   b. Individuals pursuing graduate degrees.
6. Student enrollment information, including:
   a. Total number and trends in full-time, part-time, degree-seeking, and non-degree-seeking students being served.

b. The number and trends of individuals, organizations, and agencies served through noncredit activities.

7. Higher education funding - A status report on higher education financing as compared to the long-term financing plan.
8. Ratio of incentive funding to total University System state general fund appropriations.
9. Ratio of University System state general fund appropriations to total state general fund appropriations.

The first performance and accountability report was published in December 2001 and the report has been published each subsequent year.

CCbenefits, Inc., Services

In 2002 the North Dakota University System implemented the services of CCbenefits, Inc., through a collaboration with the Association of Community College Trustees. Under the services of CCbenefits, Inc., North Dakota community colleges perform studies and forecasts on the economic impact of the colleges and ways to enhance the colleges' ability to better serve stakeholders while addressing economic development.

During the 2005-06 interim, the Economic Development Committee received information regarding the use of CCbenefits, Inc., for meeting workforce forecasting needs. The Economic Development Committee recommended legislation resulting in the 2007-08 interim Higher Education Committee being charged with receiving a report from the State Board of Higher Education on the status of implementation of the CCbenefits, Inc., services.

Testimony and Committee Considerations

The committee conducted the university study as part of the workforce system study and also considered relevant reports requested and received by the committee. The workforce system study focus group activities specifically addressed the issue of higher education and three of the focus groups were conducted at institutions of higher education. In addition to the focus groups and Workforce Congress, the committee requested and received testimony from the Chancellor, State Board of Higher Education; several presidents of institutions of higher education under the control of the State Board of Higher Education; Vice Chancellor for Strategic Planning, North Dakota University System; Director, North Dakota Center for Distance Education; Director, Department of Career and Technical Education; Vice President for Student and Outreach Services, University of North Dakota; Director of Distance Education, Bismarck State College; and Executive Director, North Dakota School Boards Association. Additionally, the committee held a joint committee meeting with the Higher Education Committee and Education Committee which included an education panel discussion.

Recommendations

The committee recommendations relating to the North Dakota University System study are addressed under **WORKFORCE SYSTEM STUDY**, **Recommendations**.

STUDY DIRECTIVES CONSIDERED AND ASSIGNMENTS MADE BY THE LEGISLATIVE COUNCIL FOR THE 2007-08 INTERIM

The following table identifies the bills and resolutions to be prioritized by the Legislative Council for study during the 2007-08 interim under authority of North Dakota Century Code Section 54-35-02.

Bill or Resolution No.	Subject Matter
1003 § 23	Study the means by which the North Dakota University System can further contribute to developing and attracting the human capital to meet North Dakota's economic and workforce needs, including ways to increase postsecondary access, improve the quality of education, contain costs, and other means, including productivity, to maximize the usage of the University System in meeting the human capital needs of the state; including a review of policy recommendations that address the postsecondary delivery system, including the mix of institutions, educational attainment gaps, degree production gaps, recruitment and retention of students, and workforce training needs; and including a review of the impact of the state's changing demographics on the University System's long-term financing plan (Higher Education Committee)
1004 § 8	Study the emergency medical services system within the state, including the funding, demographics, and impact on rural areas (Public Safety Committee)
1012 § 6	Study highway funding and transportation infrastructure needs, including those needs resulting from energy and economic development in the state (Transportation Committee)
1015 § 10	Engage consultant and architectural services, subject to Legislative Council approval, for the development of three correctional facility concepts to address the immediate and future needs of the State Penitentiary (Correctional Facility Review Committee)
1018 § 19	Participate in the Department of Commerce Renaissance Zone Conference to review the list of projects in the state which have been undertaken under the renaissance zone program, evaluate whether the projects have positively impacted the renaissance zone communities, consider options for smaller communities to become involved in the renaissance zone program or a similar program, and make recommendations regarding how the program could be improved to further meet the needs of the state and local communities (Industry, Business, and Labor Committee)
1018 § 20	Study the state's system for addressing workforce needs through a workforce system initiative that includes receipt of agency reports regarding implementation of workforce legislation enacted during the 2007 legislative session, active participation in focus groups across the state, and active participation in a workforce congress (Workforce Committee)
1018 § 21	Study the organization, powers, duties, and effectiveness of the Department of Commerce, including review of the legislative history leading to the creation of the department; review of the legislative and executive branch expectations in the creation of the department and whether those expectations are being met; evaluation of the effectiveness of the North Dakota Economic Development Foundation in providing a nonpartisan, private sector perspective to the department's approach to the department's duties; evaluation of the organizational structure of the department, including whether the department should include a division of science and technology; and evaluation of the strategic planning process of the department and its effectiveness (Industry, Business, and Labor Committee)
1018 § 28	Study issues relating to wireless service providers in the state and how wireless service impacts the business climate in the state (Industry, Business, and Labor Committee)
1146 § 2	Study issues related to the severance of hunting access from the surface estate (Natural Resources Committee)
1156 § 1	Review workers' compensation claims that are brought to the committee by injured workers for the purpose of determining whether changes should be made to the laws relating to workers' compensation (Workers' Compensation Review Committee)
1213 § 1	Study the current state exemptions for bankruptcy and the desirability of updating these exemptions (Judicial Process Committee)
1218 § 2	Study the licensure, training, and classroom education requirements for electricians in this state; reciprocity agreements with other states and the effect of those agreements on standards in this state; and the effect of the licensure, training, classroom education requirements, and reciprocity agreements on the availability of qualified electricians in this state (Industry, Business, and Labor Committee)

1219 § 2 Study the feasibility and desirability of establishing a statewide automated victim information and notification system to provide information and notify registered victims regarding the status of an offender (Judiciary Committee)

1299 § 2 Study the regulation and licensing of pharmacists in this state, including an examination of the State Board of Pharmacy, the board's size, the manner of board membership appointment, and whether the board is representative of commercial and noncommercial pharmacists; the state's demographics and the impact changing demographics in rural areas will have on the ability of small, locally owned pharmacies to remain economically viable and of rural residents to access low-cost pharmaceuticals and pharmacy and pharmacists' services; pharmacy ownership restrictions, the relevance of those restrictions in terms of marketplace competition, and the impact of those restrictions on the price and availability of pharmaceuticals and on pharmacy and pharmacists' services; and statutory interplay between the board and the North Dakota Pharmaceutical Association and whether the regulatory function of the board conflicts with the advocacy function of the association (Industry, Business, and Labor Committee)

1321 § 4 Study the extraterritorial zoning authority of cities and the impact of that authority on other political subdivisions (Advisory Commission on Intergovernmental Relations)

1359 § 2 Study Federal Motor Carrier Safety Regulations and exemptions for interstate and intrastate transportation in relation to this state's law and exemptions, including a review of any industry-specific applications of regulations and possible exemptions to current transportation activities within this state (Transportation Committee)

1456 § 1 Study the siting and decommissioning of commercial wind farms, including identification of key issues of public and industry concern; solicitation of public input from local government officials, electric utilities, the wind industry, landowners, farm organizations, and other concerned interests; review of the laws and policies of other jurisdictions; recommendations concerning laws or policies needed in this state to address wind farm siting and reclamation of wind farm sites; and the decommissioning of wind farm sites (Energy Development and Transmission Committee)

1473 § 1 (2005) Study sentencing alternatives, mandatory sentences, treatment options, the expanded use of problem-solving courts, home monitoring, and other related issues (Commission on Alternatives to Incarceration)

1479 § 1 Study the appropriateness of each agency exemption from the Administrative Agencies Practice Act, including discussion and analysis of each exemption and a presentation by each agency entitled to an exemption (Administrative Rules Committee)

2008 § 9 Study the practices and laws relating to the sale of real estate by auctioneers, including a review of the sale of multiple parcels of property at a single sale (Judiciary Committee)

2012 § 9 Study infant development programs, including a review of the state's lead agency agreement, service coordination, staffing, and funding structure, including the adequacy of the funding and the equitable distribution of the funds to providers (Human Services Committee)

2013 § 14 Study the provision of services to children and adults who are deaf or hearing-impaired, including the role of the North Dakota School for the Deaf in the provision of educational and rehabilitative services, the short-term and long-term viability of existing state facilities, and alternative approaches that might enhance the scope and breadth of service availability; the feasibility of combining the administration and delivery of services of the School for the Deaf with other area school districts, educational associations governed by joint powers agreements, special education units, and North Dakota Vision Services - School for the Blind; and examination of alternative uses for the buildings on the School for the Deaf campus beyond the scope of the school's present mission (Higher Education Committee)

2016 § 8 Study the Department of Emergency Services, including the Division of Homeland Security and the Division of State Radio, including a review of the allocation of federal homeland security funding, the operation of State Radio, and potential changes to the 911 fee structure to continue salary equity funding provided in the 2007-09 biennium (Public Safety Committee)

2030 § 11 Study the appropriateness and adequacy of high school curricula, with respect to preparing students for higher education and for the workplace, and examine curricular changes implemented in other states and expectations placed on students in other countries (Education Committee)

2030 § 16 Study the short-term and long-term evolvement of regional education associations, including the feasibility and desirability of regional education associations becoming political subdivisions; whether teachers should be employed directly by regional education associations, and whether that employment should include bargaining

rights, contract renewal and nonrenewal provisions, participation in the Teachers' Fund for Retirement, and participation in the state's uniform group insurance program; the impact that allowing regional education associations to hire teachers directly would have on the recruitment and retention of teachers currently employed by school districts and on teacher salary levels; whether teacher employment contracts, if offered by regional education associations, would have to parallel those of participating school districts with respect to common school calendars, annual or personal leave provisions, and other contractual benefits; the conduct of evaluations, if teachers are employed directly by regional education associations, including who will conduct the evaluations, their frequency, and the criteria upon which the evaluations are based; the organizational structure of regional education associations, including the qualifications of administrative or supervisory personnel; the governance structure of regional education associations; and state level oversight (Education Committee)

2032 § 13 Study the feasibility and desirability of property tax reform and providing property tax relief to taxpayers of the state, with the goal of reduction of each taxpayer's annual property tax bill to an amount that is not more than 1.5 percent of the true and full value of property, and including examination of the proper measure of education funding from local taxation and state resources and the variability of funding resources among taxing districts and examination of improved collection and reporting of property tax information to identify residency of property owners with minimized administrative difficulty (Taxation Committee)

2060 § 3 Study the laws providing criminal penalties for violation of the state's laws and administrative rules regulating occupations and professions, including consideration of whether it is the desired public policy of this state to have laws that create criminal penalties applicable to entire chapters of the North Dakota Century Code and entire titles of the North Dakota Administrative Code regulating occupations and professions (Administrative Rules Committee)

2109 § 3 Study the state's long-term care system, including capacity, geographical boundaries for determining capacity, the need for home and community-based services, a methodology to identify areas of the state which are in need of additional skilled nursing facility beds, access, workforce, reimbursement, and payment incentives (Long-Term Care Committee)

2139 § 1 Study the provisions of the North Dakota Century Code which relate to agriculture for the purpose of eliminating provisions that are irrelevant or duplicative, clarifying provisions that are inconsistent or unclear in their intent and direction, and rearranging provisions in a logical order (Agriculture Committee)

2149 § 3 Study job development authorities across the state to determine the economic impact created by the authorities, to examine funding mechanisms used by the authorities when expending resources for economic development purposes, and to determine whether the authorities serve a viable purpose (Workforce Committee)

2178 § 3 Study the allocation of oil and gas tax revenues to or for the benefit of political subdivisions with emphasis on determining whether allocations sufficiently address oil and gas development infrastructure impact to political subdivisions (Taxation Committee)

2186 § 3 Study the temporary assistance for needy families program administered by the Department of Human Services, including review of the sustainability of current services and programs being funded by temporary assistance for needy families funds, review of the potential programs and services that could be funded by use of temporary assistance for needy families funds, and review of the need for increased assistance to recipients of temporary assistance for needy families who are attending a postsecondary institution of learning (Human Services Committee)

2188 § 2 Study risk assessments for railroad facilities, the handling of hazardous cargo by railroads, and the ability of railroads to respond to potential accidents and emergencies, including sabotage, terrorism, and other crimes, and including an evaluation of whether whistleblower protection would provide a desirable response in employees to report dangerous conditions or violations of law relating to hazards, emergencies, and accidents (Transportation Committee)

2205 § 18 Study the success and effects of the laws enacted by the 55th Legislative Assembly in House Bill No. 1041 (1997) and Senate Bill No. 2052 (1997), the "swap proposal," which required counties to pay the entire cost of the local administration of Medicaid, energy assistance, basic care assistance, child care assistance, and temporary assistance for needy families in exchange for the state's assumption of the full responsibility for paying the grant costs associated with those programs, including a review of North Dakota Century Code Sections 50-01.2-00.1, 50-01.2-03.1, 50-01.2-03.2, 50-01.2-06, 50-03-00.1, 50-03-08, 50-03-09, 50-03-10, 50-06-05.1(28), 50-06-20, 50-24.1-14, and

	50-24.5-08 to determine if those provisions have created a more understandable and sustainable division of responsibility between the state and counties in the delivery and financing of these economic assistance programs (Human Services Committee)
2217 § 2	Study abstracters, title opinions, and title insurance, including a review of the orderly and efficient transfer of real property which provides adequate assurances of title (Judiciary Committee)
2284 § 2	Study the exemption provisions found in North Dakota Century Code Chapter 28-22, including determining whether the exemptions in the current form continue to serve the historical purposes of protecting debtors from creditors and providing debtors with the basic necessities of life, so that debtors will not be left destitute and public charges of the state (Judicial Process Committee)
2402 § 1	Study tribal-state issues, including government-to-government relations, the delivery of services, case management services, child support enforcement, and issues related to the promotion of economic development (Tribal and State Relations Committee)
3008	Study best state practices relating to child custody - Revised by Legislative Council directive (Judicial Process Committee)
3013	Study statutes and institutional resources relating to the domestic violence protection order process, including criminal cases for alleged violation of protection orders (Judicial Process Committee)
3022	Study the availability and future need for dementia-related services, as well as funding for programs for individuals with dementias (Long-Term Care Committee)
3025	Study possible methods of growing North Dakota's population and increasing the available workforce in the state (Workforce Committee)
3026	Study the feasibility and desirability of establishing legislation for the enforcement and assessment of civil penalties for violation of the one-call excavation notice system (Natural Resources Committee)
3044	Study how the state might pursue additional uses of Lake Sakakawea and Missouri River waters for such beneficial purposes as domestic and industrial uses, recreation, fish and wildlife, and irrigation, and how the state, to enhance its use of the lake and river, might promote congressional review of the 1944 Flood Control Act and a reexamination by the Corps of Engineers of the way in which it manages the Missouri River system (Natural Resources Committee)
3046	Study ways in which various public and private entities can cooperate with families to promote healthy lifestyles for children and create awareness about the interplay of healthy lifestyle choices and educational success (Education Committee)
3048	Study crime victims compensation funding, including a review of other states' efforts, and receive input from victim advocacy groups and medical providers (Judiciary Committee)
3056	Study the search for and identification of missing persons (Judicial Process Committee)
3063	Study the delivery and funding of veterans' services by the state and counties (Public Safety Committee)
4005	Study the feasibility and desirability of establishing a transition to independence program for young adults with mental illness (Long-Term Care Committee)
4011	Study the formation of a North Dakota gaming commission to regulate and control all forms of gaming in North Dakota (Judiciary Committee)
4021	Study the income tax laws, with emphasis on adjustments necessary to minimize or negate the impact to any taxpayer of establishing a single, uniform income tax return for all individuals (Taxation Committee)
4028	Study the feasibility and desirability of establishing a paternity registry (Judicial Process Committee)
4031	Study political subdivisions that receive property tax revenue and any changes that may increase efficiencies and reduce property taxes (Taxation Committee)
4032	Study ways in which schools and school districts can train teachers, counselors, and all other school staff to better identify high-risk students and provide programs designed to reduce the incidences of high-risk behaviors that can lead to suicide attempts (Education Committee)

NDCC Citation	Subject Matter (Committee)
4-02.1-18	Receive annual audit report from the State Fair Association (Legislative Audit and Fiscal Review Committee)
4-05.1-19(8)	Receive report from the Agricultural Research Board on its annual evaluation of research activities and expenditures (Agriculture Committee)
4-05.1-19(10)	Receive status report from the State Board of Agricultural Research and Education (Budget Section)
4-14.1-07.1	Receive statement from an ethanol plant in operation before July 1, 1995, and receiving a production incentive from the state indicating whether the plant produced a profit from its operation in the

preceding fiscal year, after deducting the payments received under the section (Budget Section)

4-24-10 Determine when agricultural commodity promotion groups must report to the standing Agriculture Committees (Legislative Management Committee)

4-35.2-04 Determine when the Agriculture Commissioner must submit a biennial report to a joint meeting of the House of Representatives and Senate Agriculture Committees on the status of the pesticide container disposal program (Legislative Management Committee)

10-19.1-152 Receive annual audit report from a corporation receiving an 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)

11-18-22.1 Receive report from the North Dakota Association of Counties before April 1 of each even-numbered year regarding how each county has used the county's document preservation fund during the preceding two fiscal years, effective until August 1, 2009 (Advisory Commission on Intergovernmental Relations)

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)

15-10-44 Receive report from the State Board of Higher Education, on request, regarding higher education information technology planning, services, and major projects (Information Technology 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)

15-69-02 Approve, reject, or rerefer, upon receiving a recommendation from the Emergency Commission and in conjunction with the State Board of Higher Education and the North Dakota Economic Development Foundation, designation of a center of excellence recommended by the Centers of Excellence Commission (Budget Section)

15-69-05 Receive annual audits from a center of excellence that is awarded funds under North Dakota Century Code Chapter 15-69 on the funds distributed to the center, until completion of four years following the final distribution of funds (Budget Section)

15.1-02-09 Receive annual report from the Superintendent of Public Instruction by the end of February on the financial condition of school districts (Education Committee)

15.1-02-13 Receive from the Superintendent of Public Instruction the compilation of annual school district employee compensation reports (Education Committee)

15.1-02-18 Receive report from the Statewide Longitudinal Data System Committee before the 61st Legislative Assembly on the status of the plan for a longitudinal data system (Education Committee; Information Technology Committee; Workforce Committee)

15.1-06-08 Receive report from the Superintendent of Public Instruction of a request from a school or school district for a waiver of any rule governing the accreditation of schools (Education Committee)

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 North Dakota Century Code 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 (Judicial Process 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 $15 million (Budget Section)
23-27-04.7	Receive report from the State Health Officer before July 1, 2008, regarding the outcome and recommendations of the State Health Council's study of the minimum requirements of reasonable emergency medical services coverage, taking into account the response time for emergency medical services (Public Safety Committee)
25-04-02.2	Authorize the 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 the Developmental Center at Westwood Park, Grafton (Legislative Audit and Fiscal Review Committee)
26.1-36.4-06	Receive report from the Insurance Commissioner on findings regarding insurers' use of modified community rating for health insurance or health benefits coverage policies (Industry, Business, and Labor Committee)
26.1-50-05	Receive annual audited financial statement and report from the 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 rule-making (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 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 (Workforce Committee)
40-63-07	Receive annual report from the Division of Community Services on conclusions of annual audits of renaissance fund organizations (Budget Section)
45-10.2-115	Receive annual audit report from a limited partnership receiving an 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)
48-01.2-25	Approve the change or expansion of, or any additional expenditure for, a state building construction project approved by the Legislative Assembly (Budget Section)
49-24-13	Receive written report from the North Dakota Transmission Authority each biennium (Energy Development and Transmission Committee)
50-06-05.1	Approve termination of federal food stamp or energy assistance program (Budget Section)
50-06.3-08	Receive annual report from 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 (Human Services Committee)
52-02-17	Receive report from Job Service North Dakota before March 1 of each year on the actual job insurance trust fund balance and the targeted modified average high-cost multiplier, as of December 31 of the previous year, and a projected trust fund balance for the next three years (Budget Section)

52-02-18	Receive report of biennial performance audit of the divisions of Job Service North Dakota (Legislative Audit and Fiscal Review Committee)
53-06.2-04	Receive biennial report from the Racing Commission regarding the operation of the commission (Judiciary Committee)
53-12.1-03	Receive report, as requested, from the director of the North Dakota Lottery regarding the operation of the lottery (Judiciary Committee)
54-03-20	Establish guidelines on maximum reimbursement of legislators sharing lodging during a legislative session (Legislative Management 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 (Human Services Committee)
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 the State Auditor (Legislative Audit and Fiscal Review Committee)
54-10-13	Determine when the 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; 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)
54-14-03.1	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 a 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 a 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 a 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)
54-16-04.1	Approve, with the Emergency Commission, acceptance of any federal funds made available to the state which are not for a specific purpose or program and which are not required to be spent before the next regular legislative session for deposit in a special fund until the Legislative Assembly appropriates the funds (Budget Section)
54-16-04.2	Approve Emergency Commission authorization of a 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 a 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)

54-17.7-13 Receive biennial report from the North Dakota Pipeline Authority on its activities (Energy Development and Transmission Committee)

54-23.3-09 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 the 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 the Commission on Uniform State Laws (Judiciary Committee)

54-35-02 Establish guidelines for use of legislative chambers and displays in Memorial Hall (Legislative Management Committee)

54-35-02 Determine access to legislative information services and impose fees for providing legislative information services and copies of legislative documents (Legislative Management Committee)

54-35-02.2 Study and review audit reports submitted by the State Auditor (Legislative Audit and Fiscal Review Committee)

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 2009 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)

54-35-15.2 Receive a project startup report and a project closeout report from the affected legislative or judicial branch agency regarding any information technology project with a total cost of $250,000 or more (Information Technology Committee)

54-35-15.2 Receive information from the State Board of Higher Education regarding higher education information technology planning, services, and major projects (Information Technology Committee)

54-35-15.2 Receive and review information received from the Information Technology Department relating to higher education information technology projects with a cost of $250,000 in one biennium or a total cost of $500,000 and receive and review information from the department regarding any information technology project of an executive branch agency with a total cost of between $100,000 and $250,000 (Information Technology Committee)

54-35-15.2 Receive a report from the Chief Information Officer regarding the recommendations of the State Information Technology Advisory Committee relating to the prioritization of proposed major information technology projects and other information technology issues (Information Technology Committee)

54-35-18 Study the impact of a comprehensive energy policy for the state and the development of each facet of the energy industry from the obtaining of the raw natural resource to the sale of the final product in this state, other states, and other countries, through August 1, 2011 (Energy Development and Transmission Committee)

54-35-22 Review workers' compensation claims that are brought to the committee by

injured workers for the purpose of determining whether changes should be made to the laws relating to workers' compensation (Workers' Compensation Review Committee)

54-35-23 Study tribal-state issues, including government-to-government relations, the delivery of services, case management services, child support enforcement, and issues related to the promotion of economic development, until August 1, 2009 (Tribal and State Relations Committee)

54-35-24 Study sentencing alternatives, mandatory sentences, treatment options, the expanded use of problem-solving courts, home monitoring, and other related issues, until July 1, 2009 (Commission on Alternatives to Incarceration)

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 (Public Safety Committee)

54-44-04 Receive report from the director of the Office of Management and Budget on the status of tobacco settlement funds and related information (Budget Section)

54-44-16 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 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)

54-60-03 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)

54-60-11 Receive biennial report from the Commissioner of Commerce on the process used and factors considered by the commissioner in identifying target industries on which economic development efforts are focused and the special focus target industry (Workforce Committee)

54-60.1-07 Receive the compilation and summary of state grantor reports filed annually by the Department of Commerce beginning in 2007 and the reports of state agencies

	that award business incentives for the previous calendar year (Workforce Committee)
54-61-03	Receive annual report from the director of the Commission on Legal Counsel for Indigents containing pertinent data on the indigent defense contract system and established public defender offices (Judicial Process Committee)
57-38-01.29	Receive report (for review) from the Tax Commissioner regarding any reduction the Tax Commissioner makes in the homestead property income tax credit (Budget Section)
57-38-01.30	Approve any reduction the Tax Commissioner makes in the commercial property income tax credit (Budget Section)
57-40.6-11	Receive annual report from the Division of State Radio on the operation of and any recommended changes in the emergency 911 telephone system standards and guidelines (Energy Development and Transmission Committee)
57-40.6-12	Receive report from the Emergency Services Communications Coordinating Committee by November 1 of each even-numbered year regarding the use of the assessed communications services fee revenue; and receive recommendations regarding changes to the operating standards for emergency services communications, including training or certification standards for dispatchers (Energy Development and Transmission Committee)
57-51.2-05	Receive report from the Governor describing the negotiations and terms of any agreement between the Governor and the Three Affiliated Tribes relating to taxation and regulation of oil and gas exploration and production within the boundaries of the Fort Berthold Reservation; and thereafter receive biennial reports describing the agreement's implementation and any difficulties in its implementation (Tribal and State Relations Committee)
65-02-03.3	Receive annual report from the director of Workforce Safety and Insurance and the chairman of the Workforce Safety and Insurance Board of Directors (Legislative Audit and Fiscal Review Committee)
65-02-30	Receive report from the director of Workforce Safety and Insurance, the chairman of the Workforce Safety and Insurance Board of Directors, and the auditor regarding the biennial performance audit of the organization (Legislative Audit and Fiscal Review Committee)
65-04-03.1	Receive periodic reports from Workforce Safety and Insurance 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 North Dakota Century Code Chapter 32-12.2 (Budget Section)
65-06.2-09	Review report from Workforce Safety and Insurance on recommendations based on safety audit of Roughrider Industries work programs and performance audit of modified workers' compensation coverage program (Industry, Business, and Labor Committee)

2003 Session Laws Citation	Subject Matter (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 North Dakota Century Code Chapter 54-44.4 (Budget Section)

2005 Session Laws Citation	Subject Matter (Committee)
Chapter 29 § 5	Review and adopt project plan for replacement of legislative technology applications and approve deliverables of each completed project phase (Legislative Management Committee)

2007 Session Laws Citation	Subject Matter (Committee)
Chapter 1 § 7	Administer appropriation for committee room renovations (Legislative Management Committee)
Chapter 1 § 8	Review Legislative Council staff services during the 2007-08 interim for the purpose of determining future legislative staffing needs (Legislative Management Committee)
Chapter 3 § 18	Approve any annual tuition increase of more than 5 percent for each year by the State Board of Higher Education for students attending institutions under its control for the 2007-08 and 2008-09 academic years (Budget Section)
Chapter 4 § 12	Receive report from the State Department of Health before August 1, 2008, regarding the status of the department's demonstration project that offers a life safety survey process for basic care facilities and long-term care facilities during and at the conclusion of a construction or renovation project that costs more than $3 million and whether the program should be made permanent (Long-Term Care Committee)

Chapter 9 § 4	Receive report from the State Fair Association before July 1, 2008, regarding the status of constructing a new grandstand on the state fairgrounds, including the status of developing a business plan and the progress of fundraising efforts (Budget Section)
Chapter 12 § 4	Receive report from the Department of Transportation regarding any additional full-time equivalent positions hired for highway construction and maintenance in lieu of entering contracts for those purposes (Transportation Committee)
Chapter 15 § 10	Approve or reject the correctional facility concept authorized by the Emergency Commission from the three correctional facility concepts forwarded to the commission by the Legislative Council's Correctional Facility Review Committee (Budget Section)
Chapter 15 § 12	Receive project startup report from the Department of Corrections and Rehabilitation before the department's inmate medical system is implemented (Budget Section)
Chapter 15 § 12	Approve implementation of an inmate medical system by the Department of Corrections and Rehabilitation (Budget Section)
Chapter 15 § 12	Receive reports from the Department of Corrections and Rehabilitation during the planning phase of the department's development of an inmate medical system; also receive project startup report before the inmate medical system is implemented (Information Technology Committee)
Chapter 15 § 17	Receive space, operational, and staffing plan from the Department of Corrections and Rehabilitation at the first Budget Section meeting after March 1, 2008, regarding the State Penitentiary and James River Correctional Center (Budget Section)
Chapter 18 § 14	Approve up to $10 million for funding centers of excellence at the first Budget Section meeting after September 1, 2007, and approve the remainder of the $15 million appropriation for funding centers of excellence at the first Budget Section meeting after September 1, 2008 (Budget Section)
Chapter 18 § 15	Approve, with the Emergency Commission, loan of $5 million by the Bank of North Dakota to the Office of Management and Budget for the purpose of providing funding to centers of excellence as directed by the Centers of Excellence Commission (Budget Section)
Chapter 18 § 18	Approve loan of up to $2,920,000 by the Bank of North Dakota to the Secretary of State for the purpose of implementing the North Dakota business development engine information technology project (Budget Section)
Chapter 18 § 19	Receive report from the Department of Commerce before July 1, 2008, on the department's Renaissance Zone Conference activities and the department's recommendations resulting from the conference (Workforce Committee)
Chapter 18 § 23	Receive report from the State Board of Higher Education before July 1, 2008, on the status of the implementation of the CCbenefits, Inc., services and any recommendations relating to the use of the CCbenefits, Inc., services (Higher Education Committee)
Chapter 18 § 38	Receive report from the Department of Commerce during the 2007-08 interim on the implementation and successes and failures of the Beginning Again North Dakota pilot program and whether the program should be continued or continued and expanded (Workforce Committee)
Chapter 25 § 1	Receive report from the Department of Human Services before August 1, 2008, on the status of medical assistance recipients' access to dental services (Human Services Committee)
Chapter 30 § 13	Receive periodic reports from the Attorney General on the status of the construction of a new crime laboratory during the 2007-08 interim (Budget Section)
Chapter 35 § 11	Receive report from the Public Service Commission and Facility Management Division by July 1, 2008, regarding the facility use agreement governing metrology services conducted within the current metrology facility and the future of the metrology laboratory (Budget Section)
Chapter 36 § 13	Receive annual report from the Agriculture Commissioner regarding the revenues and expenditures of the state meat inspection program (Budget Section)
Chapter 36 § 14	Receive annual report from the Agriculture Commissioner regarding the status of the endangered species program (Budget Section)

Chapter 36 § 16	Receive from the State Auditor during the 2007-09 biennium the results of a performance audit of the services provided pursuant to the cooperative agreement between the Agriculture Commissioner and the United States Department of Agriculture Wildlife Services (Legislative Audit and Fiscal Review Committee)
Chapter 39 § 4	Receive report from the Department of Human Services after June 30, 2008, regarding any transfers of appropriation authority in excess of $50,000 between line items within subdivisions and between subdivisions of its appropriation for the 2007-09 biennium (Budget Section)
Chapter 39 § 5	Approve loan of $3.5 million by the Bank of North Dakota to the Department of Human Services for the purpose of providing the state matching share of additional medical assistance grants for developmental disabilities services (Budget Section)
Chapter 43 § 7	Receive report from the Game and Fish Department by December 31, 2008, regarding the department's findings as a result of its study of the recruitment and retention of hunters in North Dakota (Budget Section)
Chapter 46 § 11	Receive report from the State Water Commission by July 1, 2008, regarding the commission's findings and recommendations resulting from its assessment of the impact of tile drainage on the beneficial use of water by prior water appropriators (Natural Resources Committee)
Chapter 47 § 5	Receive quarterly reports from Workforce Safety and Insurance on the agency's status of implementing the performance audit recommendations of the State Auditor (Budget Section)
Chapter 50 § 3	Receive report from the Department of Human Services at each Budget Section meeting during the 2007-08 interim on the status of the Medicaid management information system computer project (Budget Section)
Chapter 50 § 4	Approve the use of $500,000 or more of contingency funds by the Department of Human Services for a project change or other occurrence relating to the Medicaid management information system (Budget Section)
Chapter 55 § 4	Receive periodic reports from the Veterans Home during the 2007-08 interim regarding the status of the Veterans Home construction project (Budget Section)
Chapter 78 § 7	Receive report from the Commissioner of Financial Institutions before July 1, 2008, on the outcome of the commissioner's study of how the state's building and loan association and mutual savings bank laws relate to conversions of state credit unions to building and loan associations or mutual savings banks and any proposed legislation the Department of Financial Institutions determines necessary to replace North Dakota Century Code Title 7 (Industry, Business, and Labor Committee)
Chapter 155 § 1	Receive report from the dean of the University of North Dakota College of Nursing regarding the nursing education consortium to address common concerns in nursing education (Human Services Committee)
Chapter 162 § 17	Receive report from the Superintendent of Public Instruction at the conclusion of each school year during the 2007-09 biennium covering the operations of regional education associations (Education Committee)
Chapter 163 § 51	Receive periodic reports from the North Dakota Commission on Education Improvement regarding the commission's examination of the current system of delivering and financing public elementary and secondary education (Education Committee)
Chapter 163 § 52	Receive report from the Superintendent of Public Instruction during the 2007-09 biennium regarding notices received from boards of school districts which determine that providing at least 70 percent of new money received for per student payments to increase the compensation paid to teachers would result in the school district having insufficient fiscal resources to meet other obligations (Education Committee)
Chapter 171 § 4	Receive report from the Education Standards and Practices Board before November 1, 2008, regarding the payments made to individuals who hold national board certification (Education Committee)
Chapter 178 § 2	Receive report from the Superintendent of Public Instruction during the 2007-08 interim regarding the planning and development of the electronic course delivery approval process for approving the provision of elementary or high school courses electronically to a student, school, or school district (Education Committee)

Chapter 204 § 6	Receive report from the Department of Commerce's Energy Policy Commission during the 2007-08 interim on the progress of and results from the North Dakota Energy Independence Initiative (Energy Development and Transmission Committee)
Chapter 223 § 2	Receive report from the Game and Fish Department by July 1, 2008, regarding the department's findings and recommendations resulting from its study of hunter safety education requirements and hunter safety for all ages of hunters (Natural Resources Committee)
Chapter 229 § 1	Receive report from the State Health Officer before July 1, 2008, on the findings and recommendations of the department's contractor's evaluation of the trauma system in the state and the department's responses and proposed responses to the recommendations (Public Safety Committee)
Chapter 230 § 2	Receive periodic reports from the State Department of Health's Immunization Task Force during the 2007-08 interim regarding the impact of the immunization program transition on the local public health units and receive periodic reports during the 2007-08 interim from the State Health Officer regarding the fiscal impact of the transition (Human Services Committee)
Chapter 241 § 2	Receive report from the State Department of Health before August 1, 2008, regarding the impact of implementation of the survey process for basic care facilities to identify and correct deficiencies (Long-Term Care Committee)
Chapter 250 § 4	Receive report from the State Department of Health no later than July 1, 2008, regarding the findings of the department's contractor's assessment of the state's emergency medical services system to assist in developing an integrated emergency medical services program that includes a comprehensive statewide emergency medical services system (Public Safety Committee)
Chapter 314 § 7	Receive report from the Industrial Commission during the 2007-08 interim on revenues and expenditures of the abandoned oil and gas well plugging and site reclamation fund; the geophysical, geothermal, subsurface minerals, and coal exploration fund; and the geologic data preservation fund for the 2007-09 biennium (Budget Section)
Chapter 414 § 2	Receive annual reports from the Department of Human Services during the 2007-08 interim regarding the status of the alternatives-to-abortion services program (Human Services Committee)
Chapter 416 § 2	Receive report from the Department of Human Services before March 1 of each even-numbered year on services provided by the Department of Corrections and Rehabilitation relating to individuals at the State Hospital who have been committed to the care and custody of the executive director of the Department of Human Services (Correctional Facility Review Committee)
Chapter 418 § 5	Receive report from the Department of Human Services during the 2007-08 interim regarding the transition assistance for the child care program implemented pursuant to Section 1 of Senate Bill No. 2186 (Human Services Committee)
Chapter 430 § 2	Receive semiannual reports and a final report by October 1, 2008, from the Drug Utilization Review Board regarding the board's review of utilization, cost, and effectiveness of certain drugs and the board's findings and recommendations for legislative changes (Human Services Committee)
Chapter 503 § 3	Receive report during the 2007-08 interim from each county that has not fully implemented use of soil type and soil classification data from detailed and general soil surveys for property tax assessment purposes regarding the reason for failure to implement use of that information and the anticipated date when the county will have fully implemented use of that information (Taxation Committee)

LEGISLATIVE COUNCIL ASSIGNMENTS

The following table identifies additional assignments by the Legislative Council or the Legislative Council chairman to interim committees.

Responsibility	Interim Committee
Review state revenues and spending during the 2007-09 biennium, monitor the status of agency and institution appropriations, review preliminary revenue estimates, and develop preliminary spending benchmarks for the 2009-11 biennium	Budget and Finance Committee
Review and report on budget data prepared by the director of the budget	Budget Section

Study of employee benefits provided by state agencies which are not specifically authorized by law or if authorized by law are not consistent among agencies	Employee Benefits Programs Committee
Review Workforce Safety and Insurance premiums, benefits, and accountability and transparency methods and the results of consultant reviews of claims review, human resources, and management areas	Industry, Business, and Labor Committee
Statutory and constitutional revision	Judiciary Committee
Review legislative rules	Legislative Management Committee
Review State Water Commission operation and procedures	Natural Resources Committee
Receive periodic reports from the State Water Commission relating to the implementation of 2007 S.L., ch. 559, authorizing the State Water Commission to issue bonds for the Red River Valley Water Supply Project	Natural Resources Committee
Receive periodic reports on the development of the digital elevation model for the Red River Basin	Natural Resources Committee
Study the means by which the University System fulfills North Dakota's workforce needs	Workforce Committee

STUDY MEASURES NOT PRIORITIZED

The following table lists the study directives not prioritized by the Legislative Council for study during the 2007-08 interim under authority of North Dakota Century Code Section 54-35-02. The subject matter of many of these measures is the same or similar to the subject matter of studies that were given priority or of study assignments by the Legislative Council.

Bill or Resolution No.	Subject Matter
1003 § 24	Study higher education professional student exchange programs, including review of the amount of annual tuition and fees paid by students for health care-related professional education programs; the amount of annual support fees paid by the state for health care-related professional education programs; the number of state-supported slots funded and demand for state-supported slots; the present repayment provisions and loan forgiveness programs to determine cost-effectiveness, equality issues, and development of program enhancements that would aid in the recruitment of professional students to return to the state to practice their chosen profession; and discontinuation of the contracts with the Western Interstate Commission on Higher Education for access to veterinary medicine programs and consideration of negotiating contracts for veterinary medicine with Kansas, Iowa, and Minnesota
1012 § 5	Study the traffic fines imposed by state and local governments
1015 § 16	Study retirement program criteria and benefits for correctional officers and peace officers employed by state agencies, including the feasibility and desirability of allowing these employees to retire with full retirement benefits at age 55 or the "Rule of 85"
1018 § 22	Study the feasibility and desirability of implementing a grant program for North Dakota students who are attending North Dakota institutions of higher education and who have excelled academically, including consideration of desirable eligibility criteria for students under such a grant program, funding options for such a grant program, and a cost-benefit analysis of such a grant program
1018 § 27	Study the state's housing needs and how unmet housing needs may affect economic development in the state
1092 § 37	Study the application of and the desirability of changing the law relating to the welfare of Indian children when placed in the care of individuals other than parents and the effect of the Indian Child Welfare Act on state law
1387 § 1	Study the leasing or renting of facilities for the use by district courts from counties or other political subdivisions, including the feasibility and desirability of counties retaining a portion of the fees collected by the counties in lieu of leasing or renting by the state
1460 § 4	Study Workforce Safety and Insurance governance changes made during the 2007 legislative session
2009 § 15	Study the transfer of predator control from the Agriculture Commissioner to the Game and Fish Department, including a review of the South Dakota predator control program
2012 § 8	Study the feasibility and desirability of continuing the equalization of nursing home payment rates and the feasibility and desirability of establishing a provider tax or assessment on nursing homes, including input from representatives of the Department of Human Services, other appropriate state agencies, and the nursing home industry
2030 § 12	Study the delivery of services to English language learners, including federal requirements, instructional options, assistance from the private sector, and the short-term and long-term budgetary impacts on the school districts and taxpayers of the state

2030 § 13	Study the reauthorization of the No Child Left Behind Act, including the effect of proposed changes on the students, teachers, and school districts of this state, the manner in which state assessments are conducted, the reporting and utilization of assessment results, and the performance of North Dakota students
2030 § 14	Study federally funded afterschool programs being offered to North Dakota students, including the content of the programs, applicable regulations, targeted students, and the direct and indirect costs and benefits of the programs
2030 § 15	Study the feasibility and desirability of supporting teacher mentoring programs in urban and rural school districts and the most effective and efficient ways teacher mentoring programs could be implemented and delivered, including consideration of the identification and preparation of mentors and the styles, strategies, and professional development needs that would assist novice teachers in surviving, thriving, and ultimately deciding to consider teaching as a lifelong career
2152 § 3	Study the historic and anticipated uses of funds from the community health trust fund, including a cost-benefit evaluation of past expenditures from the fund, the feasibility and desirability of establishing a strategic plan for future use of the fund, and the sustainability of the fund
2161 § 2	(If federal or other funds have not been awarded to the Attorney General by September 1, 2007) Study the feasibility and desirability of implementing a system of computerized registration sites for certain criminal offenders
2169 § 11	Study the feasibility and desirability of collecting emergency 911 fees on the sale of prepaid wireless services, including an evaluation of methods by which E911 fees may be collected from end users and purchasers of prepaid wireless services on an equitable, efficient, competitively neutral, and non-discriminatory basis and a review of whether the collection of fees on prepaid wireless services would constitute an efficient use of public funds, given the technological and practical considerations of collecting the fees
2180 § 8	Study the agronomic, economic, and environmental issues related to biofuels production in North Dakota, including the availability of feedstocks and other production resources, existing and future production capacity, farmer and processor contracting models, public and private financial incentives, and the transportation infrastructure necessary to meet optimum production and marketability levels for biofuels in this state
2186 § 4	Study the state's child care resource and referral system, including consideration of the purposes and goals of the system and whether the current system is furthering these purposes and goals and consideration of the most appropriate funding source of the system
3002	Study the judicial election and judicial selection process in North Dakota
3012	Study the determination of the cost of elementary and secondary education
3034	Study the feasibility and desirability of addressing the current imbalance in the funding and governance of the State Potato Council and of eliminating refunds from the potato assessment law
3041	Study the trends and correlations of property tax revenue in relation to funding human services delivery in individual counties
3049	Study whether it is feasible and desirable to modify the renaissance zone law to allow for scattered site development
3057	Study the corporate and individual income tax laws to determine the feasibility and desirability of providing income tax benefits for employers to encourage expansion of employment opportunities in the state
3059	Study the exercise of extraterritorial zoning authority by cities
3061	Study the financial and environmental impact of confined animal feeding operations on individual property owners and local communities and develop clear, concise, and consistent laws governing the siting and regulation of confined animal feeding operations
3062	Study solutions to the problem of underage drinking
4004	Study the respective responsibilities of county and state judicial system personnel under the Uniform Juvenile Court Act in light of statutory ambiguities in defining those responsibilities
4008	Study issues affecting the delivery of child welfare services in the state, including out-of-home placement determinations; emphasis on family counseling, including in-home counseling; staffing patterns in county social services offices; supervision standards for child welfare staff; funding from private, state, and federal sources; and the viability of joint powers agreements among counties and the nature of public and private partnerships in support of effective child welfare services
4013	Study the property tax exemption for public housing authorities
4020	Study the regulation of and consumer protection for timeshare agreements

4025 Study the feasibility and desirability of developing and funding a program to provide services to youth in foster care who are preparing to transition to adulthood and for youth between 18 and 21 years of age who have left foster care and need assistance

4029 Study the feasibility and desirability of transferring some of the facilities and property of the State Hospital from the Department of Human Services to the Department of Corrections and Rehabilitation, including consideration of any constitutional, legal, and financial issues related to a transfer and creation of a comprehensive plan for the care of individuals with mental illness and care for individuals addicted to alcohol or other drugs and for the best use of the State Hospital facilities and property, including the continuation of a state hospital in Jamestown to provide necessary services to individuals with mental illness and drug addiction and alcoholism

4030 Study joint powers associations and school district reorganizations, annexations, and dissolutions and the statutory requirements for effectuating each outcome, including the role of county superintendents and county committees; the impact of each on students, parents, teachers, taxpayers, and communities; and the continued relevancy of the processes in light of numerous changes in the educational sector

2009 NORTH DAKOTA LEGISLATIVE COUNCIL BILL AND RESOLUTION SUMMARIES

HOUSE

House Bill No. 1024 - Occupational and Professional Law Violations. This bill incorporates suggestions received from occupational and professional licensing boards or commissions to make statutory language specific as to the conduct that constitutes a violation under certain occupational and professional licensing laws. (Administrative Rules Committee)

House Bill No. 1025 - Agriculture Laws - Rewrite. This bill rewrites the laws pertaining to agricultural commodities and assessments. (Agriculture Committee)

House Bill No. 1026 - Noxious Weed Control - Rewrite. This bill rewrites the laws pertaining to noxious weed control. (Agriculture Committee)

House Bill No. 1027 - Additional Full-Time Equivalent Positions. This bill allows the Budget Section, based on a recommendation from the Emergency Commission, to authorize state agencies to hire full-time equivalent positions in addition to those authorized by the Legislative Assembly. (Budget and Finance Committee)

House Bill No. 1028 - Health Education - Course Requirement. This bill requires each student to complete one-half unit of health education as a condition of high school graduation. (Education Committee)

House Bill No. 1029 - State Employee Service Awards, Employer-Paid Tuition, and Employer-Paid Professional Organization Membership and Service Club Dues. This bill establishes statutory requirements for state employee service awards, employer-paid tuition, and employer-paid professional organization membership and service club dues. (Employee Benefits Programs Committee)

House Bill No. 1030 - State Employee Performance Bonus Program. This bill increases the state employee performance bonus limitation from $1,000 per biennium to $1,000 per fiscal year and authorizes Human Resource Management Services to approve pay bonuses above the 25 percent limitation upon a showing of special circumstances. (Employee Benefits Programs Committee)

House Bill No. 1031 - State Recruitment and Retention Bonus Program. This bill defines the term hard-to-fill occupation for purposes of the state recruitment and retention bonus program. (Employee Benefits Programs Committee)

House Bill No. 1032 - Siting Jurisdiction for Certain Gas Pipelines. This bill excludes from the siting jurisdiction of the Public Service Commission construction conducted wholly within land for which a utility has previously obtained a certificate of site compatibility or a route permit from the commission and excludes actions conducted wholly within land on which is located an energy conversion facility or transmission facility that was constructed before April 9, 1975. In addition, the bill excludes from the siting jurisdiction of the Public Service Commission pipelines with an inside diameter of four inches or less or a length of one mile or less or gathering pipelines as defined by federal law. (Energy Development and Transmission Committee)

House Bill No. 1033 - Siting Decision Deadline. This bill reduces the time allowed for the Public Service Commission to designate the route for a transmission facility from six months to three months after receiving the application. (Energy Development and Transmission Committee)

House Bill No. 1034 - Legislative Council Study - Deaf or Hearing-Impaired Services. This bill directs the Legislative Council to study the provision of services to children and adults who are deaf or hearing-impaired and provides an appropriation for obtaining consulting services. (Higher Education Committee)

House Bill No. 1035 - Workforce Safety and Insurance Reserve Level. This bill provides that the level of financial reserves plus available surplus of Workforce Safety and Insurance may not exceed 150 percent of the actuarially established discounted reserve. The bill excludes from the calculation of available surplus any funds designated or obligated to specific programs or projects pursuant to a directive or specific approval by the Legislative Assembly. (Industry, Business, and Labor Committee)

House Bill No. 1036 - Workforce Safety and Insurance Premiums. This bill requires Workforce Safety and Insurance to establish premium rates annually on an actuarial basis. The bill provides the statewide average premium rate level may not deviate by more than five percentage points from the recommended actuarial indicated premium level for that year. (Industry, Business, and Labor Committee)

House Bill No. 1037 - Workforce Safety and Insurance Independent Performance Evaluation. This bill requires that the biennial independent performance evaluation of Workforce Safety and Insurance address performance measurements, including a review of trends in workplace injuries; whether claims are being handled fairly and efficiently; whether claims or premium decisions have been subject to inappropriate political influence; whether safety and loss prevention programs are effective in reducing claims and the severity of claims; whether injured employees, employers, and service providers are satisfied with the services of the organization; whether litigation rates and the number of contested claims are appropriate as compared with other workers' compensation programs or systems; and whether premiums are appropriate and reserve levels are adequate. (Industry, Business, and Labor Committee)

House Bill No. 1038 - Child Custody and Visitation. This bill authorizes the Department of Human Services to issue a restricted operator's license

to an obligor or an individual who fails to comply with a subpoena. The license may be used only during that obligor's or individual's normal working hours. (Judicial Process Committee)

House Bill No. 1039 - Exemptions From Judicial Process. This bill clarifies and revises several of the absolute exemptions, including family books, clothing and wearing apparel, and fuel; clarifies that certain exemptions are available only to the head of household; increases and clarifies the motor vehicle exemption; allows an exemption for a house trailer or mobile home to be taken in lieu of the homestead exemption; for the purpose of claiming an account as exempt, limits the time period within which an individual may contribute to a retirement account; increases the additional exemption for head of a family from $5,000 to $7,500; clarifies the exemptions for pensions, annuity policies, and life insurance; and increases or eliminates the maximum amount of compensation that may be claimed as exempt on account of the debtor's right to receive or property that is traceable to wrongful death or personal bodily injury. (Judicial Process Committee)

House Bill No. 1040 - Missing Persons. This bill establishes a procedure for locating and identifying missing persons. The bill, which is based upon model missing person legislation, establishes a uniform procedure for law enforcement to follow for locating missing persons and identifying and preserving unidentified human remains. (Judicial Process Committee)

House Bill No. 1041 - Statewide Automated Victim Information and Notification System. This bill relates to statutory changes necessary for the implementation of a statewide automated victim information and notification (SAVIN) system. The victim and other concerned citizens are required to register with the SAVIN system to receive their victim notifications. Some of the notification duties that are currently the responsibility of certain entities, including prosecuting attorneys, courts, or custodial authorities, would be automated under the SAVIN system. (Judiciary Committee)

House Bill No. 1042 - Statutory Revision. This bill makes technical corrections throughout the North Dakota Century Code. (Judiciary Committee)

House Bill No. 1043 - Dementia Care Services Program. This bill directs the Department of Human Services to contract for a dementia care services program in each area of the state served by a regional human service center to provide personalized care consultation services, training, and education relating to dementia; provides a $1.2 million general fund appropriation for the program; and provides for a report to the Legislative Council regarding the outcomes of the program. (Long-Term Care Committee)

House Bill No. 1044 - Program for Services to Transition-Aged Youth. This bill requires the Department of Human Services to develop or contract for a program for services to transition-aged youth at risk. The bill identifies services, including individualized assessments, coordinated services, self-advocacy training, vocational rehabilitation, in-home support, and independent living skills training. The bill provides for the use of a wraparound planning process, provides a transition-aged youth at risk pilot project, and appropriates $700,000 from the general fund for the program and pilot project. (Long-Term Care Committee)

House Bill No. 1045 - Severance of the Right of Access. This bill makes the prohibition on the severance of the right of access for hunting access permanent. (Natural Resources Committee)

House Bill No. 1046 - Emergency Response and Recovery Fund. This bill establishes an emergency response and recovery fund to be used to assist individuals, political subdivisions, and Indian tribes in paying the costs of responding to and recovering from a disaster or emergency declared by the Governor which does not qualify for a presidential disaster declaration. The bill provides an $11 million general fund appropriation to the Department of Emergency Services for deposit in the emergency response and recovery fund in the 2009-11 biennium. (Public Safety Committee)

House Bill No. 1047 - Hazardous Chemicals Preparedness and Response Program. This bill increases the per chemical fee for the hazardous chemicals preparedness and response program from $25 to $52 and the maximum fee for a facility from $150 to $416. The bill provides that the fees collected be distributed one-third to the Department of Emergency Services, one-third to local emergency planning commissions, and one-third to the North Dakota Firefighters Association. (Public Safety Committee)

House Bill No. 1048 - Mutual Aid Agreements. This bill provides that the Department of Emergency Services prepare and distribute to political subdivisions guidelines and model intrastate mutual aid agreements to provide a system for mutual assistance among political subdivisions in the prevention of, response to, and recovery from a local disaster or emergency. (Public Safety Committee)

House Bill No. 1049 - Minimum Certification Standards for Special Operations Units. This bill provides that the Peace Officer Standards and Training Board prescribe minimum certification standards and continuing education requirements for all special operations units that operate under the authority of local law enforcement agencies in the state. (Public Safety Committee)

House Bill No. 1050 - State Radio System. This bill provides a $7.2 million general fund appropriation to the Adjutant General for purchasing or leasing infrastructure and equipment for up to eight additional radio towers to expand coverage of the State Radio system during the 2009-11 biennium. (Public Safety Committee)

House Bill No. 1051 - Mobile Data System. This bill provides a $750,000 general fund appropriation to the Adjutant General for upgrading the Department of Emergency Services' mobile data system to high-speed broadband access during the 2009-11 biennium. (Public Safety Committee)

House Bill No. 1052 - Computer-Aided Dispatch System. This bill provides a $2 million general fund appropriation to the Adjutant General for completing Phase 2 of the Department of Emergency Services'

computer-aided dispatch system during the 2009-11 biennium. (Public Safety Committee)

House Bill No. 1053 - Emergency Management Organizations. This bill requires each county to maintain an emergency management organization that serves the entire county or be a member of a regional emergency management organization that serves more than one county. The bill provides a $1.5 million general fund appropriation to the Adjutant General for providing grants to counties that merge emergency management efforts during the 2009-11 biennium. (Public Safety Committee)

House Bill No. 1054 - Adjutant General Study - Next Generation 911. This bill provides that the Adjutant General study the effects of Next Generation 911 on the public safety answering points in the state during the 2009-10 interim. The bill provides a $100,000 general fund appropriation to the Adjutant General for the 2009-11 biennium for conducting the study. (Public Safety Committee)

House Bill No. 1055 - Regional Training and Exercising Activities. This bill provides a $400,000 general fund appropriation to the Adjutant General for providing grants for regional cross-discipline and cross-jurisdictional training and exercising activities for fire departments, law enforcement, emergency medical services, and public communications dispatchers for the 2009-11 biennium. (Public Safety Committee)

House Bill No. 1056 - Adjutant General Study - Multidiscipline Emergency Responder Academy. This bill provides that the Adjutant General study the feasibility and desirability of establishing a multidiscipline emergency responder academy in the state. The bill provides a $100,000 general fund appropriation to the Adjutant General for the 2009-11 biennium for conducting the study. (Public Safety Committee)

House Bill No. 1057 - Department of Veterans Affairs, Administrative Committee on Veterans Affairs, and Delivery of Veterans' Services. This bill requires county veterans' service officers to maintain accreditation by the National Association of County Veterans Service Officers; provides that the general supervision and governance of the Veterans Home is vested in a Veterans Home Governing Board, which consists of seven members appointed by the Governor; provides that the commissioner of the Department of Veterans Affairs be appointed by the Governor; requires the Department of Veterans Affairs to be located in Bismarck or Mandan; reduces the size of the Administrative Committee on Veterans Affairs from 15 individuals to 7 individuals with the commissioner of the Department of Veterans Affairs serving as the chairman of the committee; and revises the powers and duties of the Administrative Committee on Veterans Affairs to remove the supervision of the Department of Veterans Affairs and the Veterans Home and to provide that the committee create and implement a strategic plan for the delivery of veterans' services. (Public Safety Committee)

House Bill No. 1058 - Financial Assistance to Tribal Colleges. This bill expands the definition of nonbeneficiary student, requires tribal college grant applications include documentation of enrollment status, increases the grant from $4,581 to $5,304, and includes reporting requirements to the Budget Section and Legislative Audit and Fiscal Review Committee. The bill is declared an emergency. (Tribal and State Relations Committee)

House Bill No. 1059 - Indian Affairs Commission Members, Powers, and Duties. This bill corrects the tribal names of the members of the Indian Affairs Commission and authorizes the commission to accept gifts, grants, donations, legacies, and devises from any source which are appropriated for the purposes of the commission. (Tribal and State Relations Committee)

House Bill No. 1060 - Committee on Tribal and State Relations Extension. This bill extends the Committee on Tribal and State Relations through July 31, 2011. (Tribal and State Relations Committee)

House Bill No. 1061 - Workers' Compensation Coverage of Artificial Members. This bill expands the workers' compensation coverage of artificial members by expanding the definition of artificial members to include a prescriptive device that is an aid for a natural part, organ, limb, or other part of the body if the damage to the prescriptive device is accompanied by an injury to the body. (Workers' Compensation Review Committee)

House Bill No. 1062 - Workers' Compensation Rehabilitation Services. This bill expands workers' compensation rehabilitation awards by allowing Workforce Safety and Insurance to provide an additional 20 weeks of benefits for injured employees participating in retraining programs and to provide an additional two months of benefits while the injured employee is participating in work-search activities. The bill also directs Workforce Safety and Insurance to implement a system of pilot programs to assess alternative methods of providing rehabilitation services. (Workers' Compensation Review Committee)

House Bill No. 1063 - Workforce Safety and Insurance Coverage of Preexisting Conditions. This bill limits the circumstances under which Workforce Safety and Insurance may deny medical coverage or recoup medical payments. (Workers' Compensation Review Committee)

House Bill No. 1064 - Cost-of-Living Adjustment for Workers' Compensation Benefits. This bill shortens to three years the period of time after which an injured employee receiving temporary total disability benefits or permanent total disability benefits qualifies for supplementary benefits and shortens to three months the period of time an injured employee is required to be off wage-loss benefits before Workforce Safety and Insurance recalculates benefits. (Workers' Compensation Review Committee)

House Bill No. 1065 - Operation Intern and Marketing to Out-of-State Students. This bill provides funding for the Department of Commerce Operation Intern program and directs the department to administer a program to market North Dakota higher education opportunities to out-of-state students. (Workforce Committee)

House Bill No. 1066 - Tax Credits for Automation and Innovation. This bill provides three types of tax

credits for taxpayers that are primary sector businesses--a credit for purchases of manufacturing machinery and equipment for the purpose of automating manufacturing processes, a credit for qualified expenditures necessary for implementing lean manufacturing, and a credit for qualified research expenses. (Workforce Committee)

House Concurrent Resolution No. 3001 - Agriculture Laws - Rewrite. This concurrent resolution directs the Legislative Council to continue its study of laws pertaining to agriculture. (Agriculture Committee)

House Concurrent Resolution No. 3002 - Legislative Council Study - Workforce Safety and Insurance Governance. This concurrent resolution provides for a Legislative Council study of the governance structure of Workforce Safety and Insurance and determine the feasibility and desirability of mutualization of Workforce Safety and Insurance. (Industry, Business, and Labor Committee)

House Concurrent Resolution No. 3003 - Sustainability of Tribal Social Service Programs Study. This concurrent resolution directs the Legislative Council to study the sustainability of tribal social service programs. (Tribal and State Relations Committee)

House Concurrent Resolution No. 3004 - Legislative Council Study - Indian Education Issues. This concurrent resolution provides for a Legislative Council study of Indian education issues. (Tribal and State Relations Committee)

SENATE

Senate Bill No. 2026 - Agency Rules Filing Deadline. This bill advances the filing deadline for agency rules by 15 days to allow more time for preparation and delivery of proposed rules to Administrative Rules Committee members. This will allow sufficient time for delivery of proposed rules to committee members for adequate study before the meeting at which the rules will be considered. The change will not delay the effective date of rules. (Administrative Rules Committee)

Senate Bill No. 2027 - Joint Jurisdiction in Extraterritorial Zoning Area. This bill requires joint jurisdiction of the city and the entity that otherwise would have had jurisdiction in the area of extended zoning jurisdiction of a city for any zoning change or subdivision plat approval or change in zoning or subdivision regulation. The bill identifies eight factors to be used by an administrative law judge when deciding any dispute. (Advisory Commission on Intergovernmental Relations)

Senate Bill No. 2028 - Community Service Supervision Fee. This bill repeals the $50 community service supervision fee that courts are required to impose on participants in community service programs. (Commission on Alternatives to Incarceration)

Senate Bill No. 2029 - Commission on Alternatives to Incarceration Extension. This bill extends the existence of the Commission on Alternatives to Incarceration until June 30, 2013. (Commission on Alternatives to Incarceration)

Senate Bill No. 2030 - State Penitentiary Renovation and Expansion. This bill provides an appropriation of $25 million from the general fund and $42 million from the State Penitentiary land fund to the Department of Corrections and Rehabilitation to complete Phase 1 of the renovation and expansion of the State Penitentiary project, including replacement of the East Cellhouse and construction of new health services, reception and entry, segregation housing, and central control facilities. (Correctional Facility Review Committee)

Senate Bill No. 2031 - Property Tax Reduction for Wind Towers. This bill extends the reduction of taxable value from 3 percent to 1.5 percent of assessed value for a centrally assessed wind turbine electric generation unit with a nameplate generation capacity of 100 kilowatts or more from January 1, 2011, to January 1, 2015. (Energy Development and Transmission Committee)

Senate Bill No. 2032 - Sales and Use Tax Exemption for Wind Towers. This bill makes permanent the sales and use tax exemption for materials used in the construction or expansion of a wind-powered facility. (Energy Development and Transmission Committee)

Senate Bill No. 2033 - Income Tax Credit for Renewable Energy Devices. This bill extends the 15 percent income tax credit for the installation of geothermal, solar, wind, or biomass energy devices from an end date of January 1, 2011, to an end date of January 1, 2015; allows a credit carryover of 10 years; and limits the sale of unused credits to the credits earned before January 1, 2011. (Energy Development and Transmission Committee)

Senate Bill No. 2034 - Oil Extraction Tax Exemption for Tertiary Recovery Using Carbon Dioxide. This bill extends the oil extraction tax exemption for tertiary recovery projects using carbon dioxide from 10 years from the date of incremental production to an unlimited duration. (Energy Development and Transmission Committee)

Senate Bill No. 2035 - Sales and Use Tax Exemption for Beneficiated Coal Plant and Severance Tax Exemption for Beneficiated Coal in Agricultural Commodity Processing. This bill includes a power plant that uses beneficiated coal within the sales and use tax exemption and includes a severance tax exemption on coal purchased for coal beneficiation which is used in an agricultural commodity processing facility. (Energy Development and Transmission Committee)

Senate Bill No. 2036 - Coal Conversion Tax Exemption for Repowering Beneficiated Coal Plant. This bill extends the coal conversion tax exemption for repowering to include an electrical energy generating unit that uses beneficiated coal. The exemption from the coal conversion tax is limited to electrical energy generating units instead of the current application to electrical generating plants. (Energy Development and Transmission Committee)

Senate Bill No. 2037 - Sales and Use Tax Exemption for Gas From Oil Wells. This bill includes within the sales and use tax exemption for the construction or expansion of a system used to compress, process, gather, or refine gas from an oil well, rather than only a gas well, and provides for a certificate of qualification for the exemption from the Tax Commissioner. (Energy Development and Transmission Committee)

Senate Bill No. 2038 - North Dakota University System Budget Request, Appropriation, Performance Measures, and Legislative Council Study. This bill continues through June 30, 2011, the continuing appropriation of higher education institutions' special revenue funds and through July 31, 2011, the authority for the North Dakota University System to continue at the end of the biennium unspent general fund appropriations and the requirement that the budget request and appropriation of the North Dakota University System include block grants for a base funding component, an initiative funding component, and an asset funding component. The bill provides for a Legislative Council study of higher education and provides performance and accountability measures to be included in the State Board of Higher Education performance and accountability report pursuant to North Dakota Century Code Section 15-10-14.2. (Higher Education Committee)

Senate Bill No. 2039 - State Board of Pharmacy Membership and Connection to Pharmaceutical Association. This bill adds two members to the State Board of Pharmacy and repeals the statutory connection between the State Board of Pharmacy and the North Dakota Pharmaceutical Association. (Industry, Business, and Labor Committee)

Senate Bill No. 2040 - Sales and Use Tax Exemption for Telecommunications Infrastructure Equipment. This bill creates a sales and use tax exemption for equipment used in telecommunications infrastructure development. (Industry, Business, and Labor Committee)

Senate Bill No. 2041 - Criminal Justice Information Sharing Board. This bill expands the membership of the Criminal Justice Information Sharing Board and provides that board members who are not state employees are entitled to compensation and expense reimbursement. (Information Technology Committee)

Senate Bill No. 2042 - Child Custody and Visitation. This bill provides for changes in the terminology used in family law; requires that in any proceeding to establish or modify a judgment providing for parenting time with a child, a parenting plan is required to be developed and filed with the court; adds several best interest factors; clarifies several current best interest factors; and establishes a parenting coordinator program. (Judicial Process Committee)

Senate Bill No. 2043 - Racing Commission. This bill provides that the Racing Commission is subject to the supervision and direction of the Attorney General. (Judiciary Committee)

Senate Bill No. 2044 - Basic Care and Nursing Facility Bed Moratorium. This bill extends the moratorium on the state's licensed basic care bed capacity and the state's licensed nursing facility bed capacity from July 31, 2009, to July 31, 2013. (Long-Term Care Committee)

Senate Bill No. 2045 - Written Advance Notice of Transfer or Discharge. This bill requires at least a 30-day written advance notice of any transfer or discharge from a nursing home, swing-bed hospital, basic care, or assisted living facility. (Long-Term Care Committee)

Senate Bill No. 2046 - Health Facilities Construction and Renovation Projects Survey Program. This bill requires the State Department of Health to conduct surveys during construction or renovation projects of health facilities licensed by the State Department of Health. (Long-Term Care Committee)

Senate Bill No. 2047 - Emergency Training Grants. This bill provides a $128,400 general fund appropriation to the State Department of Health for providing emergency training grants to rural law enforcement officers during the 2009-11 biennium. (Public Safety Committee)

Senate Bill No. 2048 - Mandatory Trauma Designation and Quick Response Unit Licensure. This bill provides for mandatory hospital participation in the state's trauma system and mandatory licensure of quick response units. (Public Safety Committee)

Senate Bill No. 2049 - Emergency Medical Services Operations Grant Program. This bill provides for the expansion of the emergency medical services (EMS) operations grant program, including the assessment of EMS operations, the provision of leadership training, and the development of an annual statewide EMS recruitment drive. The bill provides a $4,524,000 appropriation from the insurance tax distribution fund to the State Department of Health for the expansion of the program for the 2009-11 biennium. (Public Safety Committee)

Senate Bill No. 2050 - Emergency Medical Services Licensure, Property Tax Levies, and Communications. This bill amends the definition of emergency medical services (EMS), provides that the Health Council's rules relating to the licensure of EMS operations may include response time standards, amends provisions relating to property tax levies for EMS, and provides that the State Department of Health may regulate the communications methods and protocols for EMS operations. (Public Safety Committee)

Senate Bill No. 2051 - Oil and Gas Gross Production Tax Cap Eliminated for Political Subdivision Allocations. This bill eliminates statutory caps on oil and gas gross production tax allocations to counties and eliminates the cap on allocations to the oil and gas impact grant fund. (Taxation Committee)

Senate Bill No. 2052 - County Implementation Deadline for Soil Survey Use in Assessments. This bill extends the deadline from 2010 to 2012 for county implementation of soil survey use in agriculture assessments. (Taxation Committee)

Senate Bill No. 2053 - Sales and Use Tax Exemption for Purchases by an Indian Tribe. This bill provides a sales and use tax exemption for purchases by an Indian tribe. (Tribal and State Relations Committee)

Senate Bill No. 2054 - Department of Transportation Agreements With Tribal Governments. This bill removes the limitation that Department of Transportation agreements with tribal governments may not exceed $25,000. (Tribal and State Relations Committee)

Senate Bill No. 2055 - Workers' Compensation Firefighter and Law Enforcement Presumption. This bill clarifies the burden of proof under workers' compensation law that provides a presumption for firefighters and law enforcement officers. The bill provides the presumption that the impairment is work-related can be overcome by clear and convincing evidence, rather than by competent evidence, the impairment is not work-related. (Workers' Compensation Review Committee)

Senate Bill No. 2056 - Workers' Compensation Mileage Reimbursement. This bill amends the workers' compensation calculation for medical travel mileage reimbursement to an injured employee so actual mileage is used to compute the reimbursement instead of using

city limit to city limit mileage. (Workers' Compensation Review Committee)

Senate Bill No. 2057 - Workers' Compensation Permanent Partial Impairment Award for Vision Injury. This bill provides a scheduled workers' compensation permanent partial impairment award for impairment of vision. The bill provides a graduated schedule for vision impairments beginning at 20/80 corrected visual acuity. (Workers' Compensation Review Committee)

Senate Bill No. 2058 - Workers' Compensation Independent Medical Examinations. This bill provides a distinction between a Workforce Safety and Insurance independent medical examination, which contemplates an actual examination of an injured employee, and an independent record review, which contemplates a file review of an injured employee's medical records. (Workers' Compensation Review Committee)

Senate Bill No. 2059 - Workforce Safety and Insurance Office of Independent Review. This bill provides for Workforce Safety and Insurance to pay an injured employee's attorney's fees and costs for a case review. The bill allows an injured employee who uses the services of the Office of Independent Review to be eligible for payment of $500 for attorney's fees and $150 for costs associated with an attorney consultation before an administrative hearing is held. (Workers' Compensation Review Committee)

Senate Bill No. 2060 - Renaissance Zones. This bill expands and modifies the renaissance zone law to include tax incentives for repair or remodeling of utility infrastructure, to provide for transfers of historic preservation and renovation tax credits, and to delete the half-mile requirement for the three-block island provision. (Workforce Committee)

Senate Bill No. 2061 - State Employees Nearing Retirement. This bill directs Human Resource Management Services to study how to retain state workers who are nearing retirement. (Workforce Committee)

Senate Bill No. 2062 - Opportunity Grant for North Dakota High School Graduates and New Graduate Earned Income Deduction. This bill provides a phased-in college tuition grant program for qualified North Dakota high school graduates beginning with the high school graduating class of 2014 and provides an earned income tax deduction for recent college graduates. The bill is designed so the income tax deduction is effective immediately and remains in effect until the opportunity grant program becomes effective. (Workforce Committee)

Senate Concurrent Resolution No. 4001 - Legislative Hearings for Federal Block Grants. This concurrent resolution authorizes 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 61st Legislative Assembly through September 30, 2011. (Budget Section)

Senate Concurrent Resolution No. 4002 - Legislative Council Study - Workforce System. This concurrent resolution provides for a Legislative Council study of the state's workforce system, the feasibility and desirability of enacting legislation to address the issues identified in the 2007-08 interim Workforce Committee's consultant's report, and the implementation of workforce initiatives enacted by the 61st Legislative Assembly. (Workforce Committee)

Senate Concurrent Resolution No. 4003 - Immigration Reform. This concurrent resolution expresses support for the development of a balanced national immigration policy and urges Congress to work to develop an immigration policy that protects and preserves the safety and interests of the United States and its citizens while also recognizing the needs of businesses to have a stable and legal supply of workers. (Workforce Committee)