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SUMMARY

BRIEFLY - - - THIS REPORT SAYS

BUDGET

During the current interim, the Council acted upon requests of the State Social Service Board to spend federal funds matched by private moneys and of the Combined Law Enforcement Council to spend federal funds available to it. In addition, the Council gave approval to the University of North Dakota to sell property received as a bequest from the Hughes Estate.

Other interim activities included review of the Social Service Board's budgetary problems, and performance reviews of the Departments of Agriculture and Public Instruction. In September and October Council Tour Groups visited state institutions to review plant improvement needs and to gather other information to assist in analyzing budget requests during the 1973 Legislature.

The Council studied the current fiscal practices and procedures of the Board of Higher Education and the institutions under its control, and reviewed the laws, which date back to 1937, governing such practices. The Council recommends a bill to streamline these fiscal practices, including voucher handling procedures, in the Board of Higher Education office, and to discontinue the Board's maintenance of financial records also maintained at the colleges and universities. Other bills recommended by the Council change the requirements for approval of out-of-state travel and give college administrators authority to invest endowment funds.

The Council also reviewed the general area of the printing and publishing practices of the State and its political subdivisions. Out of this study has come 12 bill recommendations, which include measures directing the preparation of a legal publications handbook for the form and style of various legal publications, including sample ballots; eliminating some of the requirements concerning state agency biennial reports, and changing the due-date for those reports; eliminating the requirement that the Governor's hunting and fishing proclamations be printed in every county newspaper; shortening the time political subdivisions have to get minutes of their proceedings to newspapers; requiring quotations on all state sixth-class printing jobs not done by the Department of Acounts and Purchases; and allowing the sale or leasing of state mineral rights and land to proceed despite minor errors in the notice of the sale or lease.

EDUCATION

The Council studied the financial problems of the State's school districts and recommends a bill which adds to the Foundation Program $25 million per year in new money plus the personal property replacement funds now going to schools. The strengthening of the Foundation Program will result in substantial reductions in local property taxes, some of which will be mandated by the elimination of certain special levies and the reduction of the maximum mill levies for most school districts. The bill changes the weighting factors for high school districts to more accurately reflect actual costs, increases state transportation payments, and requires the equalization of 15 mills in each school district prior to payment from the Equalization Program.

The Council recommends a bill to change the membership of the Teachers' Professional Practices Commission (TPPC) and give it advisory responsibilities concerning teacher certification. Rather than all nine TPPC members being selected from nominees chosen by the North Dakota Education Association (NDEA), as the law now provides, the Governor would select five NDEA nominees, two from the nominees of the school boards, and two from the nominees of school administrators. The responsibility for teacher certification would remain with the Superintendent of Public Instruction, but he would consult with the TPPC prior to determining certification criteria.

The Council studied levels of support, duplication in course and degree offerings, cooperation, uniform academic terms, and space utilization in the colleges and universities in this State. Because these matters fall within the constitutional authority of the Board of Higher Education, and because no matters requiring legislative attention were raised, the Council makes no recommendations in this field.

FINANCE AND TAXATION

After studying the alternatives available to a taxpayer who is not satisfied with his property taxes, the Council concluded that there is a need for a simple, fair procedure before an impartial board. The Council recommends a bill to create a tax appeals board appointed by the Governor. Any three of the seven board members would sit on any single appeal. Appeals would be taken only after county commissioners have taken action on abatements.

The Council also recommends a bill to clarify procedures against taxing officials who neglect or refuse to do their duty. The bill provides for penalties including imprisonment, a fine, removal from office, and a writ of mandamus to compel performance.

The Council asked professionals in the tax preparation business to help it in seeking a method of simplifying the state income tax. The report of the income tax advisory committee offered three alternatives: updating the present income tax law to include federal tax reform changes, applying a flat or variable rate to federal tax liability, or using federal adjusted gross income less North Dakota adjustments. The Council makes no recommendations concerning the state income tax, but instead is giving the Legislative Assembly information with which to make a policy decision in this area. The Council, to improve property tax assessment pro-

cedures, recommends a bill changing the assessment date from April first to February first, and moving up the statutory meeting dates for the various boards of equalization. The bill makes a number of other changes in the timetable of assessment procedures to provide more time for certain duties. The Council also recommends a bill to cover situations where any assessor or township, city, or county board of equalization, or any combination thereof, increase the valuation of real property by certain minimum standards. In such cases, notice would have to be sent to the taxpayer at least 10 days before the final day for authorized action by the assessor or board of equalization. Another bill requires tax statements be sent by December thirty-first by all county treasurers.

To bring practice and law into conformity, the Council recommends a bill to change the computation of net value for the imposition of the property tax from 50 percent to 10 percent, except for property assessed by the State Board of Equalization. This bill also reduces statutory bonded indebtedness limitations to prevent them from being automatically increased because of the assessed value changes. The Council makes no recommendations concerning proposals to raise revenue to finance more state aid for schools.

GOVERNMENT ADMINISTRATION

The Council conducted an extensive study of the relationships between health and social service-related agencies on both the state and regional level. The Council also assisted the communities of Williston and Dickinson to establish single units to provide human services rather than offer these services through both a Community Mental Health and Retardation Center and an Area Social Service Center in each community.

Drs. Brandt and Sheldon conducted a study of Area Social Service and Community Mental Health and Retardation Centers for the Council. The study recommended combining the centers throughout the State to improve the quality of service, to reduce administrative costs, and to eliminate the duplication between centers. In addition to legislation to facilitate establishment of human service centers, the Council recommends a bill to authorize the State Merit System Council to provide Merit System coverage to such centers.

Ernst & Ernst delivered a report to the Council as an adjunct of its pilot program budget project for the Executive Budget Office. The report pointed to the need for consolidation on the state level if ultimate success is to be achieved in consolidating local agencies. As a step in this direction, the Council recommends transferring the Division of Vocational Rehabilitation to the Social Service Board.

INDUSTRY AND BUSINESS

The Council recommends a modified, no-fault auto insurance proposal providing first-party benefits to persons injured in auto accidents while preserving the right to seek recourse from the negligent parties. The first-party benefits will adequately compensate 95 percent of the people injured in auto accidents, and insurance companies would be required to offer supplemental coverage. To offset the additional costs of the first-party

benefits, the bill places limitations on recoveries for pain and suffering in less serious cases. Insurance industry experience indicates these are the cases overpaid by insurers. In addition, the bill provides for cost savings by requiring arbitration between insurance companies and by placing limitations on hospital room and board benefits and on income loss benefits.

Due to the impact irrigation farming will have on North Dakota's economy, the Council recommends a bill to authorize the Industrial Commission to issue debentures through the Bank of North Dakota to provide capital for loans to enable residents of North Dakota to purchase and finance irrigation distribution systems and related agricultural facilities and enterprises. Such loans would be made on a participating basis with other banks and lending institutions. The Industrial Commission could issue debentures in amounts not to exceed a total of $10 million, which is the constitutional limitation on bonds of state-owned utilities, enterprises, and industries.

To improve agricultural finance in general, the Council recommends amendments to present law which would place state banks on the same basis as federal banks by increasing the amount which could be loaned from 80 to 90 percent and the term from a maximum of 25 to 30 years on real estate loans, and which would allow banks to lease personal property for not to exceed 10 years rather than the current five-year limitation.

The Council also recommends several amendments to Section 6-09-15, including one which would provide that the Bank of North Dakota must hold the first lien on real estate loans to farmers by being first in place, but would not require a "duly recorded first mortgage" (as required under present law) which has been interpreted to mean first in time as well as first in place.

The Council studied the need for continuation of the North Dakota Rural Rehabilitation Corporation, and recommends a concurrent resolution requesting Congress to unconditionally release the corporation's assets to North Dakota. The assets currently total about $3.2 million. The Council also recommends a bill to have these assets administered by the Bank of North Dakota.

JUDICIARY

The Council reviewed all the criminal laws in Title 12 of the North Dakota Century Code to update and consolidate definitions, classify criminal offenses, and improve sentencing provisions. The Council recommends a 96-page main revision bill establishing a new criminal code, clarifying definitions, providing standards of culpability, specifying defenses to criminal charges, classifying criminal offenses, and delineating criteria to be used in making sentencing decisions. Every effort was made to avoid controversial, substantive changes in the main revision bill.

Three controversial areas surfaced during the Council's revision study: sale to and use of tobacco by minors, power of home rule cities to supersede state criminal statutes, and statutory definitions of sexual offenses. Therefore, separate bills are recommended prohibiting the sale to and use by minors of tobacco and prohibiting a home rule city from superseding state criminal statutes. Three bills are submitted presenting alternative versions of sexual offense definitions.

The Council also recommends a concurrent resolution to continue the revision and modernization of the criminal laws outside of Title 12.

To decrease the caseload of certain courts, the Council recommends a bill providing for new methods of disposition of traffic violations. The recommended bill establishes alternative procedures for the disposition of all noncriminal traffic violations. These procedures allow the offender to appear and pay the statutory fee, post and forfeit bond, appear and explain his action, or request a hearing. In addition, the bill establishes a point system. Under this system, every traffic violation is worth a specified number of points. When a certain number of points is reached, the individual's license is suspended for a definite period of time. A temporary restricted license could be issued during the suspension.

The Council, to aid the efficiency of the trial process and to effect trial cost savings, recommends a concurrent resolution proposing an amendment to the North Dakota Constitution to reduce the jury size from 12 to 6 persons for both civil and criminal cases. The proposed amendment will allow the Legislature to increase the number of jurors to 12 and to provide that non-unanimous decisions may be rendered by at least 80 percent of the jurors.

The Council recommends a concurrent resolution for submission to the electorate of a new article of the North Dakota Constitution unifying the court system under the North Dakota Supreme Court. Under the unified system, the Chief Justice could temporarily assign judges or retired judges, to any court or district, appoint a court administrator, and assign a judge to hear a cause when any justice or judge has a conflict of interest or is physically or mentally incapacitated. In addition, the recommended article provides for the establishment of judicial districts by the North Dakota Supreme Court, the removal of justices and judges for cause, and voter confirmation of incumbent justices and judges who run for election unopposed.

LEGISLATIVE PROCEDURE AND ARRANGEMENTS

The Council is authorized by law to make arrangements for the Legislative Session and to make recommendations for the smooth functioning of the Legislature. It has taken action and made recommendations in numerous areas.

The Council directed the Committee Chairman and staff to secure appropriate and adequate space for the 1973 Session and looked at the possibility of using the Capitol's maintenance building, in the future and with remodeling, for housing some of the state agencies now in the Capitol. The Council also approved replacement of the roll call machines, upgrading the audio system, purchase of committee room air filters, installation of an incoming WATS telephone line to provide citizens with information during the Session, and purchase of wooden furniture for the offices of the four Floor Leaders and the Speaker.

The Council recommends numerous rules amendments dealing with a wide variety of legislative procedures and arrangements, including open legislative meetings, earlier deadlines for bill introduction by executive agencies, time certain for debates, committee membership changes, and delay of final consideration of committee reports recommending indefinite

postponement. Other recommendations and more detailed explanations may be found in the text of this report.

The Council recommends expanding the present intern program from the eight of the 1971 Session to 14 for the 1973 Session. Interns will now be available to every standing committee except the two Appropriations Committees. A $10,000 federal grant has allowed this expansion.

MEDICAL EDUCATION

The Council in late December 1971 undertook a study of medical education in North Dakota, with particular emphasis on the problems facing the University of North Dakota (UND) Medical School. It appears likely that by 1975 the school will be unable to transfer all of its two-year students because of the unavailability of transfer openings.

This creates problems for the State not only concerning the medical opportunities it provides for its youth, which are now among the best in the nation, but also regarding the health care and health care facilities in the State and the number of physicians and other allied health professionals there will be available in North Dakota.

The Council now has before it a proposal creating a degree-granting medical school in North Dakota. The new school would have 64 students in each class. The first two years of medical school, the basic science years, would still be at UND. Twenty-four students would then transfer to other schools, while the remaining students would be split among four Area Health Education Centers (AHECs) (Bismarck, Minot, Fargo, and Grand Forks) for their third year of clinical work. During their fourth year, students could continue at the AHEC's or they could, through electives, take special programs at other clinics and hospitals around the State, at UND, or at out-of-state schools, hospitals, or clinics.

The Council is also looking at other alternatives, such as contracting with other states to take North Dakota students for their final two years or for all four years, and the possible development of a regional medical education program with neighboring states such as South Dakota, Montana, or Minnesota.

UND has hired a consulting firm to make an in-depth report on the various alternatives by December 1. The Council will meet jointly with the State Board of Higher Education in December to consider this report and will then decide on its recommendations to the 1973 Legislature.

MODEL LAWS

The Council reviewed several recently proposed Uniform and Model Acts, with special emphasis upon the Uniform Probate Code, and recommends four bills to the 1973 Legislative Assembly.

The Uniform Disposition of Community Property Rights at Death Act provides a uniform procedure for disposition of property where a married person dies in North Dakota and owns, at death, community property

acquired in another state, or property acquired elsewhere which is traceable to community property funds.

The Model Relocation Assistance Act requires that all state programs receiving federal funds and requiring the acquisition of private property provide relocation assistance payments to displaced persons or businesses forced to move by the programs. Such assistance would be in addition to condemnation or purchase payments.

The Model Public Defender Act creates a statewide Public Defender program for the defense of indigents charged with crimes and headed by a Defender General, appointed by the Governor.

The Council recommends both the adoption of the Uniform Probate Code and a continuing study of the Code whether or not the Code passes. The Code eliminates the present adversary atmosphere of probate proceedings and allows personal representatives to proceed in the manner they reasonably deem fit. Court approval would not be needed unless a party interested in the estate or the court itself felt it necessary that the representative be supervised. The object of the Code is to reduce the cost and time involved in probate proceedings.

NATURAL RESOURCES

The Council recommends revision of the State's game and fish laws to remove archaic and obsolete sections, reconcile conflicts and ambiguities, eliminate surplus language, and arrange the material in a logical and easily understood order. The Council avoided substantive changes. The proposed Title 20.1 includes the edited and rearranged game and fish laws currently contained in Title 20 and Chapter 61-27, except for those sections transferred to other parts of the Code, and obsolete and archaic laws which were deleted. Chapter 61-27 is included because the Game and Fish Department is responsible for administering and enforcing this chapter.

Due to the importance of water and the need to use and manage this valuable resource as beneficially as possible, the Council recommends legislation requiring that all land in North Dakota be within water management districts no smaller than countywide in size by July 1, 1974. Although most land is now within one of the countywide water management districts, there are a few counties with no districts and some counties with one or more smaller districts. The State Water Commission would have authority, under the proposed legislation, to create districts in the areas where there are none, or where present districts are smaller than countywide in size.

The proposed legislation also allows two or more countywide water management districts to consolidate. Conversely, a water management district consisting of two or more counties could divide into two or more districts as long as the boundaries of the new districts coincided with county lines.

The Council also recommends a bill that would withhold from sale, except to a public agency or state political subdivision, all lands under control of the Board of University and School Lands, until the Outdoor Recreation Agency has completed a study to determine which tracts of land have exceptional public value. Land retention would be based on

exceptional scenic, archaeological, historical, recreational, conversational, or wildlife enhancement value. Upon completion of the study, only those tracts of land placed on a retain list would continue to be withheld from sale, except that such lands could be sold to a public agency or state political subdivision.

POLITICAL SUBDIVISIONS

The Council considered two problems in this field during the interim: one dealing with local boards of budget review, and the other on how best to provide excavators and others with the locations of buried transmission facilities.

After reviewing the pros and cons of boards of budget review, the Council recommends a bill strengthening the boards. The bill seeks to achieve this strengthening by giving the public-at-large the majority on the boards, lengthening board terms from one to three years, giving boards authority over line item in the city, school district, and park district budgets it reviews, compensating board members in the same manner as school board members, and by giving the boards a longer time period to review the budgets.

Regarding buried transmission facilities, the Council recommends a bill establishing a card file system in the office of each county register of deeds for the location of the facilities buried in that county. The persons or firms burying the pipe or cable would send the register of deeds a card indicating the section where the facilities are buried. An excavator, for example, would call the register of deeds to see if buried facilities were located where he was digging. If there were some there, he would then call the owner of the facilities. The owner would have to pinpoint the location of the facilities for the excavator. Anyone who failed to check for the location of buried facilities, and then damaged them, would be liable not only for the damage, but also for loss of services.

REAPPORTIONMENT

The Council formed a special committee late in the 1971-73 biennium to study and select one or more reapportionment plans to submit to the 1973 Legislature. It was formed in response to many requests and because the current, court-ordered legislative apportionment is only for the 1972 elections.

The Council considered problems associated with representation of military personnel and college students. Few Air Base personnel actually vote or become North Dakota residents. College students are included in the population of the cities where they attend school rather than in their home communities. The Council decided that population rather than voter registration should be the basis for reapportionment. The Council also concluded it had neither the time, nor the necessary data, to divide multi-member districts into single-member subdistricts in an accurate manner.

The Council recommends a reapportionment plan which provides for 37 legislative districts, with 50 Senators and two Representatives per Sen-

ator. The Council plan has a deviation ratio of 1.04 to 1. The most populous district is 2.0 percent above the average population per Senator, and the least populous district is 1.7 percent below the average population per Senator. The "one-man, one-vote" requirement and "communities of interest" were the guiding principles considered most important in selection of the reapportionment plan.

The Council also recommends that the Legislature consider action on constitutional provisions regarding legislative representation, and that the 1973 Legislature direct a concurrent resolution to the Bureau of Census requesting that population figures be collected by township and city block, thereby enhancing the ability to reapportion on the basis of equal representation.

REVENUE SHARING

The 1971 Legislature directed the Council to study the impact of federal revenue sharing proposals upon programs of the State and its political subdivisions and alternative intrastate distribution programs for general revenue sharing. This was directed so that, through proper legislative action, the State and its political subdivisions might receive not only their proper share of federal allocations, but also full and adequate information to develop program priorities.

The Fiscal Assistance to State and Local Governments Act (federal-state revenue sharing, approved October 20, 1972) allows a state to adopt an alternative formula for distribution of funds to local governments by using the optional factor of population multiplied by tax effort or population multiplied by inverse per capita income. However, it does not appear feasible for the Council or the 1973 Legislature to study alternative formulas because the data base from which alternative possibilities are derived will not be available from the Office of Revenue Sharing until the first or second quarter of 1973.

The Council recommends legislation to enable local units of government to spend revenue sharing funds, although disbursement of such funds is not included in the current budget, and creation of a revenue sharing trust fund in the state treasury for deposit of revenue sharing payments received by the State. The Council also recommends a concurrent resolution providing for a study by the Council of the impact of revenue sharing upon programs of the State and its local units of government, and consideration of alternative formulas for distribution of revenue sharing funds to local units of government.

STATE AND FEDERAL GOVERNMENT

The Council reviewed the sale or exchange of state-owned lands, statutory boards and commissions, and the Judges' Retirement Fund, and makes several recommendations.

There are two primary problems regarding the sale or exchange of state-owned lands: delay encountered by some state agencies in exchanging land with the Federal Government, and legislation authorizing the sale or purchase of specific lands which contains legally insufficient infor-

mation. The Council considered and tabled a bill creating a uniform procedure for sale or exchange between governmental agencies. Regarding the second problem, the Council recommends a bill requiring the Attorney General to review each legislative bill providing for the sale, exchange, or purchase of any specific land by the State.

A concurrent resolution calling for a Council study of land use planning and zoning is also recommended by the Council.

As part of its continuing study of state boards and commissions, the Council recommends repealing the statutory authorization for the Natural Resources and Environmental Management Council and the North Dakota Trade Commission; amending the membership provisions of the Emergency Commission by replacing the Agriculture Commissioner with the State Treasurer; changing the functions of the State Auditing Board to that of an appeals board; removing several abolished boards from the list of those to which the Governor makes appointments; deleting references in State law to the State Park Advisory Council which has been abolished; and authorizing a membership contribution at the Soldiers' Home.

The Council retained the Stennes consulting actuary firm of Minneapolis to review the status of the Judges' Retirement Fund. After reviewing that study, the Council recommends a bill providing that all Supreme and District Court judges elected in the future be under the Public Employees Retirement System and the phasing out of the present separate Judges' Retirement Fund.

TRANSPORTATION

After studying laws related to the reporting of accidents and driving records, the Council recommends a bill to provide that driving records which are released contain only convictions of traffic offenses and suspensions, revocations, and restrictions of driving privileges, rather than containing reports of all accidents as well. This change will protect persons whose records contain accidents for which they were not at fault. The Council also recommends a resolution expressing the support of the Legislative Assembly for the imposition of strong sentences for persons convicted of driving while intoxicated (DWI). To provide for more equitable distribution of the highway tax distribution fund to cities, the Council recommends a bill to allocate the cities' share on the basis of 125 percent of the state per capita average to cities under 5,000 population, with the balance to be distributed equally on a per capita basis to cities of 5,000 or more population. The amount distributed to cities would not change appreciably, but the amount allocated to each city would be based upon population and would not be related to the county where a city is located.

Because of the economic cost to North Dakota of recent airline strikes, the Council recommends a concurrent resolution urging the Civil Aeronautics Board to grant authority to a second airline to serve the State on east-west routes.

UND - ELLENDALE BRANCH

The 1971 Legislature closed the University of North Dakota - Ellendale Branch (UND - EB) and directed the Council to find a new use for the college's property.

Final conveyance of the property was authorized by the 1971 Legislature only after voters approved a constitutional amendment deleting references to the school. Sale could only be to the City of Ellendale.

The Council, after exploring possible uses by the State and the Federal Government, and after sifting through the 122 inquiries generated by a nationwide advertising campaign, reached an agreement on November 30, 1971, with Trinity Bible Institute (TBI), Jamestown, concerning the UND - EB facilities.

The facilities were leased to the City of Ellendale on March 9, 1972. The city in turn subleased the property to TBI. On September 5, 1972, North Dakotans approved the UND - EB constitutional amendment, thus authorizing conveyance of the real property. Governor William L. Guy signed a quitclaim deed conveying the UND - EB real property to the City of Ellendale on October 27, 1972. TBI began classes at UND - EB September 22, 1972.

The Council recommends three bills concerning UND - EB. One deletes scattered references to UND - EB in state statutes. Another authorizes conveyance of the UND - EB personal property, which is still under lease and sublease. The third measure reallocates the UND - EB Grant Land Fund assets to other state institutions and directs the deposit of the remaining UND - EB fire insurance proceeds in the State's general fund.

REPORT
of the
NORTH DAKOTA LEGISLATIVE COUNCIL

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

FORTY-THIRD LEGISLATIVE ASSEMBLY
1973

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North Dakota Legislative Council

STATE CAPITOL — BISMARCK 58501   TELEPHONE (701) 224-2916

January 3, 1973

The Honorable William L. Guy
Governor of North Dakota

Members, Forty-third Legislative Assembly
of North Dakota

I have the honor to transmit the Legislative Council's report and recommendations to the Forty-third Legislative Assembly.

Major recommendations include a substantive revision of the State's criminal laws; a non-substantive revision of the State's game and fish laws; a new method of financing elementary and secondary education; a modified version of no-fault auto insurance; procedures to facilitate the merger of various social and mental health services on the local level; adoption of the Uniform Probate Code; a new formula for distributing highway tax funds to cities and counties; a tax appeals board; legislation to complete the conveyance of the University of North Dakota-Ellendale Branch; changes in the State's judicial system, including a "unified court" and a new method of handling minor traffic offenses; placing the State's Supreme Court and District Court judges under the Public Employees Retirement System rather than the current separate judicial retirement system; increasing the Bank of North Dakota's opportunities regarding irrigation financing; revision of teacher certification procedures; adoption of the Model Public Defender Act and the Model Relocation Assistance Act; the formation of countywide water management districts in every North Dakota county; strengthening boards of budget review; and creation of a quick and easy method to locate buried transmission facilities.

In addition, other Council Committees will, by the time the Forty-third Legislative Assembly convenes in January 1973, make recommendations concerning a degree-granting medical school for North Dakota; a new legislative reapportionment plan; and revenue sharing.

This report also contains brief summaries of each Committee report and of each recommended bill and resolution.

Respectfully submitted,

Bryce Streibel

Representative Bryce Streibel
Chairman
North Dakota Legislative Council

HISTORY AND FUNCTIONS OF THE LEGISLATIVE COUNCIL

HISTORY OF THE COUNCIL

The Legislative Council was created in 1945 as the Legislative Research Committee. Its name was changed by the 1969 Legislature to more accurately reflect the scope of its duties. The legislative council movement began in Kansas in 1933. At present, 45 states have such a council or its equivalent. Five states use varying numbers of special committees.

The establishment of legislative councils is a result of the growth of modern government and the increasingly complex problems with which legislators must deal. Although one may not agree with the trend of modern government in assuming additional functions, it is, nevertheless, a fact which the legislators must face. There is a growing tendency among legislators of all states to want the facts and full information on important matters before making decisions on spending the taxpayers' money.

Compared with the problems facing present legislators, those of but one or two decades ago seem much less difficult. The sums they were called upon to appropriate were much smaller. The range of subjects considered was not nearly so broad nor as complex. In contrast with other departments of government, however, the Legislature in the past has been forced to approach its deliberations without records, studies, or investigations of its own. Some of the information that it has had to rely upon in the past has been inadequate, and occasionally it has been slanted because of interest. To assist in meeting its problems and to expedite the work of the session, the legislatures of the various states have established legislative councils.

The work and stature of the North Dakota Legislative Council has grown yearly. Among its major projects since that time have been revision of the House and Senate Rules; soldiers' bonus financing; studies of the feasibility of a state-operated automobile insurance plan; highway engineering and finance problems; oil and gas regulation and taxation; tax assessment; drainage laws; reorganization of state education functions; highway safety; business and cooperative corporations; licensing and inspections; mental health and mental retardation laws; public welfare; credit practices; elementary and secondary education and higher education; special state funds and nonreverting appropriations; homestead exemptions; governmental organization; minimum wages and hours; life insurance company investments; partnerships; republication of the North Dakota Revised Code of 1943; legislative organization and procedure; securities; capitol office space; welfare records; revision of motor vehicle laws; school district laws; investment of state funds; mental health program; civil defense; tax structure; school district reorganization; school bus transportation; corporate farming; Indian affairs; legislative postaudit and fiscal review; water laws; constitutional revision; county government reorganization; a complete updating of the State's school district laws; an industrial building mortgage program to encourage new industry in the State; creating a central state microfilm unit in the Secretary of State's office; and a uniform insurance group for state employees.

Major Council studies and recommendations of the current biennium include a substantive revision of the State's criminal laws; a non-substantive revision of the State's game and fish laws; a new method of financing elementary and secondary education; a modified version of no-fault auto insurance; procedures to facilitate the merger of various social and mental health services on the local level; adoption of the Uniform Probate Code; a new formula for distributing highway tax funds to cities and counties; a tax appeals board; legislation to complete the conveyance of the University of North Dakota - Ellendale Branch; changes in the State's judicial system, including a "unified court" and a new method of handling minor traffic offenses; placing the State's Supreme Court and District Court judges under the Public Employees Retirement System rather than the current separate judicial retirement system; increasing the Bank of North Dakota's opportunities regarding irrigation financing; revision of teacher certification procedures; adoption of the Model Public Defender Act and the Model Relocation Assistance Act; the formation of countywide water management districts in every North Dakota county; strengthening boards of budget review; and creation of a quick and easy method to locate buried transmission facilities.

In addition, the Council will, by the time the Forty-third Legislative Assembly convenes in January 1973, make recommendations concerning a degree-granting medical school for North Dakota; a new legislative reapportionment plan; and revenue sharing.

FUNCTIONS OF THE COUNCIL

In addition to making detailed studies which are requested by resolution of the Legislature, the

Council considers problems of statewide importance that arise between sessions or upon which study is requested by individual members of the Legislature and, if feasible, develops legislation for introduction at the next session of the Legislature to meet these problems. The Council provides a continuing research service to individual legislators, since the services of the Council staff are open to any individual Senator or Representative who desires specialized information upon problems that might arise or ideas that may come to his mind between sessions. The staff of the Council drafts bills for individual legislators prior to and during each legislative session upon any subject on which they may choose to introduce bills. In addition, the Council revises portions of our Code which are in need of revision and compiles all the laws after each session for the Session Laws and the Supplements to the North Dakota Code.

In addition to providing technical accounting assistance to the Committee on Budget, the Legislative Budget Analyst and Auditor assists the Legislative Audit and Fiscal Review Committee by analyzing all of the audit reports prepared by the State Auditor and by conducting any other studies which the Legislative Audit and Fiscal Review Committee wishes to initiate in its program to improve the fiscal administration procedures and practices of State Government. Also, during the interim, the Legislative Council staff provides stenographic and bookkeeping services to the Legislative Audit and Fiscal Review Committee, the Capitol Grounds Planning Commission, and the Legislative Compensation Commission.

METHODS OF RESEARCH AND INVESTIGATION

The manner in which the Council carries on its research and investigations varies with the subject upon which the Council is working. In all studies of major importance, the Council has followed a practice of appointing a committee from its own membership and from other members of the Legislature who may not be members of the Council, upon whom falls the primary duty of preparing and supervising the study. These studies are in most instances carried on by the committees with the assistance of the regular staff of the Council, although on some projects the entire Council has participated in the findings and studies. These committees then make their reports upon their findings to the full Legislative Council which may reject, amend, or accept a committee's report. After the adoption of a report of a committee, the Council as a whole makes recommendations to the Legislative Assembly and, where appropriate, the Council will prepare legislation to carry out such recommendations, which bills are then introduced by members of the committees.

During the interim, the Council contracted with individual consultants, consulting firms, and accounting firms in connection with some of its studies. These were Eide, Helmeke, Boelz & Pasch, Certified Public Accountants; Broeker Hendrickson & Co., Certified Public Accountants; Dr. James E. Brandt and Richard W. Sheldon; Touche Ross & Co.; Ernst & Ernst; Ted Smith; and George V. Stennes & Assoc. In all other instances, the Council's interim studies were handled by the committees and Council staff. On certain occasions, the advice and counsel of local, State, and Federal Government personnel, as well as that of various individuals and professional associations, was sought and obtained.

REGIONAL MEETINGS AND INTERSTATE COOPERATION

The Legislative Council is by law designated the State's committee on interstate cooperation. In this regard, Council members, the Council's staff, and Committee members participated in the activities of the National Legislative Conference, the Council of State Governments, the Midwestern Regional Conference, and the Five-State Legislative Conference. In addition, members of the Council's Committee on Model Laws and Intergovernmental Cooperation served on several ad hoc interstate committees during the biennium. The Director of the Council's professional staff is a past Chairman of the National Legislative Conference.

REPORT AND RECOMMENDATIONS
BUDGET

Section 54-44.1-07 of the North Dakota Century Code directs the Legislative Council to create a special committee on budget to which the director of the budget is to present the budget and revenue proposals recommended by the Governor.

Members of the Budget Section of the Legislative Council appointed to the Committee for the interim work are: Representatives Robert F. Reimers, Chairman, Glenn Henning, Howard Johnson, Charles Mertens, Bert Miller, Mike Olienyk, Enoch Thorsgard, Oscar Solberg, LeRoy Hausauer, Harley R. Kingsbury, Ernest J. Miedema, Olaf Opedahl, James A. Peterson, Kenneth Tweten, and Vernon E. Wagner; and Senators Lester Larson, Robert Melland, Paul Swedlund, Earl H. Redlin, Dave M. Robinson, Oscar J. Sorlie, and I. J. Wilhite. The following legislators were appointed to the Budget Section in August 1972 to participate in Tour Group visitations of the state institutions and projects since they are members of the Forty-second Legislative Assembly's Committee on Appropriations: Senators Frank Wenstrom, H. Kent Jones, C. Warner Litten, and Evan Lips; and Representatives Halvor Rolfsrud, Herbert Anderson, Dale Linderman, and Clark Jenkins.

The report of the Committee on Budget was submitted to the Legislative Council at the biennial meeting of the Council held at Camp Grafton. The report and recommended legislation were adopted for submission to the Forty-third Legislative Assembly by the Legislative Council in November 1972.

At the organizational meeting of the Budget Section which was held on Friday, June 4, 1971, members of the Budget Section were advised of the Committee's statutory responsibilities, which are as follows:

1. Act upon requests of the State Social Service Board to expend funds which are to be matched by private or local agencies;

2. Act upon requests of the Law Enforcement Council to expend funds appropriated to it on a contingent basis;

3. Act upon requests to expend North Dakota State University Branch Experiment Station local moneys in excess of that specifically appropriated by the Legislature;

4. Receive reports from the State Auditor's office regarding the cost of operation of facilities constructed pursuant to the Revenue Bond Act;

5. Receive reports from the State Auditor's office of the cost of services provided by agencies which license, inspect, or regulate private business activities or products; and

6. Review and act upon requests by the State Board of Higher Education for authority to use Land under the control of the Board to construct buildings and campus improvements thereon which are financed by donations, gifts, grants, and bequests, and act upon requests from the State Board of Higher Education for authority to sell any real property or buildings which an institution of higher learning has received by gift or bequest.

SOCIAL SERVICE BOARD

The 1971 Legislative Assembly appropriated $500,000 of federal and private funds for special Social Service Board projects during the 1971-73 biennium. Three hundred and fifty thousand dollars of the appropriation is federal money, while $150,000 is to be contributed by individuals, organizations, governmental units, or any other source, other than from agencies or projects receiving support from the state general fund. The appropriation bill requires that expenditures from the fund shall be for projects which have first been approved by the Budget Section of the Legislative Council. During the interim, the Budget Section has approved expenditures from the special appropriation in the following amounts for the following purposes and projects:

Description	Total	Federal	Private
Elks Camp Grassick	$ 32,000	$ 24,000	$ 8,000
Volunteer Agency Projects	194,700	146,025	48,675
School Social Services	71,000	53,250	17,750
Sheltered Workshops	36,000	25,660	10,340
Oppen Trust	80,000	60,000	20,000
Total	$413,700	$308,935	$104,765

The School Social Services referred to include assistance to school districts in their special education and counseling programs for students. Private agencies participating in the voluntary agency projects include Children's Village, Lutheran Social Services, and Catholic Family Services. Some of the voluntary agencies have their offices in the same building as area social service centers are located. The purpose of the joint funding effort between the State and voluntary agencies is to:

1. Assist community clergymen to strengthen and improve the quality of their pastoral counseling and integrate their services into those provided by existing community service agencies.

2. Improve local services to unwed parents and to children born out of wedlock in an effort to prevent dependency.

3. Develop the utilization of volunteers in the social service field in an effort to provide adequate services at a minimal cost.

4. Improve the quality of adoption services provided in the State.

LAW ENFORCEMENT COUNCIL

The 1971 Legislative Assembly appropriated $6,054,400 of federal funds for use by the Combined Law Enforcement Council. Section 3 of the 1971-1973 appropriation bill for the Combined Law Enforcement Council stated that expenditure of moneys pursuant to the appropriation shall require prior approval from the Committee on Budget of the Legislative Council. The Committee on Budget may approve the expenditure of funds on the basis of projects proposed or on a basis of general type or classification of proposed expenditures. The bill further provides that before approving a request, the Committee on Budget shall consider the impact the expenditure of the federal funds' portion of such proposed expenditure may have on future expenditures required of the State and its political subdivisions.

The Budget Section approved Law Enforcement Council plans for the expenditures of federal funds at both the June 4 and December 9, 1971, meetings of the Budget Section. Based upon approval of the Budget Section, Law Enforcement Council officials anticipate spending $3,603,636 for Law Enforcement projects during the current biennium. On many projects the Committee took action twice: once in approving the overall plan proposed to federal officials by the Law Enforcement Council, and then the approval of specific projects to be undertaken once the plan was approved. Because of this situation, the main part of the $2,863,025 approved at the December 9, 1971, meeting was already represented in proposals approved at the earlier Committee meeting.

Of the $3.6 million approved, planning and administration moneys for the state office amounted to $233,000, and for the cities, counties, and state agencies to plan Law Enforcement programs and study Law Enforcement problems, $130,000. The remainder of the funds are classified as action money which is to be used for the various approved projects. Forty percent of all planning money for North Dakota must be made available to the political subdivisions of the State, while 75 percent of all action grant money must be made available to political subdivisions. The matching requirements during this interim for planning grants was 90 percent federal and 10 percent local, while the matching percentage for action grants is 75 percent federal and 25 percent local, except for construction where the matching must be on a 50-50 basis.

A special problem was brought to the Budget Section's attention. In order to be eligible for federal funds during the next biennium under the Omnibus Crime Control and Safe Streets Act of 1968 as amended, a state "buy in" is required which must be equal to one-fourth of the local share contributed to the project. This money must be appropriated and paid by the State if it wishes to continue with the program of giving assistance to local communities to improve law enforcement. For example, if the Federal Government awards a $900,000 grant to North Dakota on a 75 percent-25 percent match, the local share of the total project of $1,200,000 would be $300,000. In order to participate in the program, the State would be required to pay one-fourth of this local share or $75,000. This new provision caused much concern on behalf of Budget Section members. The Budget Section will be giving additional consideration to the impact of this requirement when it meets in December. To more fully understand the implication of spending law enforcement funds on the state level, the Office of the Executive Budget has been asked to report to the Appropriations Committees during the next Legislative Session the impact of law enforcement grants on state agency and institution budgets. The Law Enforcement Council was asked to prepare a report to include a list of persons, by program and by department, employed as a result of Law Enforcement grants, the nature of such programs, program costs, and comments as to the permanency of approved programs documented by long-range cost estimates. A copy of a report presented to the

Committee by the Law Enforcement Council regarding many of these points is available and on file in the Legislative Council office.

UNIVERSITY OF NORTH DAKOTA

At the July 25, 1972, Budget Section meeting, University of North Dakota officials informed the Budget Section of the manner in which the Hughes Realty Corporation plans to dispose of properties owned by it, the proceeds of which, in part, have been gifted to the University of North Dakota. The value of the Hughes Realty Corporation stock donated to the University is estimated at $2 million. The Corporation owns a number of parcels of property in the Bismarck area. It was reported that the first bids for the sale of the properties were not accepted by the Corporation's Board of Directors since the amount was less than 90 percent of the appraisal value. The bids were invited on a lump sum and parcel basis. Since the bids received after the first invitation were turned down, the Board is not sure of the exact manner it will ask for bids in its next attempt to dispose of the property; however, the Budget Section was assured that the Corporation's Board of Directors will exercise the best judgment possible in the disposition of the property. The Budget Section authorized the Board of Directors to proceed with its decision to dispose of properties owned by the Hughes Realty Corporation. It was noted that the facilities to be constructed on the University of North Dakota campus from the Hughes estate were included and approved by the Legislature in bills considered by it during the last and previous Legislative Sessions.

No requests were received by the Budget Section from the North Dakota State University Experiment Stations for approval of spending local funds, nor did the Committee receive any reports from the State Auditor's office regarding revenue bond projects at the colleges and universities or the cost of licensing and inspection provided by state departments and agencies which control or regulate business activities.

SOCIAL SERVICE BOARD FISCAL PROBLEMS

At the July 25, 1972, meeting, Social Service Board officials presented a report projecting a $4.2 million deficit possible by June 30, 1973, consisting of $3,000,000 in federal funds, $1,040,000 in state funds, and $160,000 in county funds. This additional need for funds was over and above the $3.1 million of additional state and federal funding approved for Social Service Board use during the current biennium by the State Emergency Commission. Thus, Social Service Board expenditures were then estimated at over $7 million more than the $71 million appropriated by the Forty-second Legislative Assembly. Social Service Board officials said that an unprecedented increase in caseloads is one of the problems faced by the Department. Substantial increases in medical costs were also cited by Department officials as contributing to the projected deficit.

Letters to Congressional Delegation

At an earlier meeting held on April 7, 1972, welfare officials had alerted the Budget Section to possible funding problems within the Department. At that time, the Budget Section contacted the North Dakota Congressional Delegation, the Honorable Earl L. Butz, Secretary, U. S. Department of Agriculture, and the Honorable Elliot L. Richardson, Secretary of the Department of Health, Education and Welfare, asking them to take whatever action possible to help North Dakota avoid serious cuts in its welfare programs. Sections of the letter are as follows:

> "To avoid immediate substantial reductions in the State's assistance programs, your assistance to effect the following changes in federal law is asked:
>
> 1. Urge the Congress of the United States to assume full responsibility for funding and administering the Aid to Families with Dependent Children Program on federal Indian reservations.
>
> 2. Exempt North Dakota from the Disregard of Income Provisions of the federal regulations as they relate to the AFDC Program in North Dakota.
>
> 3. Exempt the Social Service Board of North Dakota from federal regulations regarding the Food Stamp Program which provides that when a person eligible for and desires food stamps, he may have the full cost of the monthly coupon allotment deducted from any money payments he is entitled to under any federally aided public assistance program.

Senate Concurrent Resolution No. 4084 of the Forty-second Legislative Assembly, copies of which were filed with the North Dakota Congressional Delegation, the Secretary of the United States Department of Health, Education and Welfare, and the Secretary of the United States Department of the Interior, asked that

the Congress of the United States review and amend its statutes relating to Aid to Families with Dependent Children to provide that the Federal Government assume 100 percent funding of welfare programs for Indians residing on federal reservations and that such programs be administered by the Federal Government in cooperation with tribal governments.

We ask that every effort be made to achieve this funding level as soon as possible. There are over 2,000 North Dakota Indian children from approximately 750 household units receiving about $3,700,000 per biennium in AFDC assistance. The state matching portion exceeds $1,100,000 per biennium. If the Federal Government would assume 100 percent matching under this program this year, sufficient state funds would be available to fund the State's Public Assistance and Social Service Programs at levels recommended by the State Social Service Board and the last Legislative Assembly. Including AFDC, an estimated $6,800,000 of Public Assistance expenditures are incurred for persons residing on North Dakota's Indian reservations each biennium. Fiscal relief through a better matching formula would be of much help to all Indians receiving assistance under Social Service Board programs. The Indian population in North Dakota would benefit considerably more than the non-Indian population if fiscal relief could be obtained, since the Indian population receives about 10 percent of all Social Service Board assistance grants, and yet the Indian population constitutes only 2.6 percent of the State's total population.

During the month of February, about 900 of the 3,800 AFDC cases in North Dakota were eligible for earned income exclusions. This exclusion is provided for by Section 402(a) (8) (ii) of Title IV of the Social Security Act as amended. It exempts from each eligible family or individual the first $30 of earned income per month, plus one-third of the remainder of their earned income. This exemption remains in effect until earned income reaches as high as $800 per month in some instances.

The Social Service Board advises that if a more reasonable earned income maximum formula could be applied, approximately 250-300 AFDC families would no longer be eligible under the North Dakota program. The Budget Section of the Council asks that sufficient changes be made to federal law to allow the Social Service Board to set reasonable requirements for North Dakota.

USDA regulations (36 F. R. 14102, published July 29, 1971) provide that states wishing to participate in the Food Stamp Program must make available to assistance recipients who so elect, a method whereby the cost of stamps is deducted from their assistance payments.

The Social Service Board has repeatedly voiced its opposition to this mandatory provision and has obtained consent from the Department of Agriculture to postpone implementation of this requirement until July 1, 1972. We ask that you introduce or support legislation to modify this provision to allow the continuance of the present method of handling food stamps in North Dakota.

The Social Service Board maintains that its present practice of distributing food stamps through county programs in North Dakota is sufficient. A withholding system on the state level whereby allowances for stamps are deducted will be very expensive and difficult to administer. The administrative cost on the state level will be an estimated $40,000 during the last year of the current biennium. It will also require a redesign of the data processing system at a time when the present system has just reached an acceptable level of operation after much testing and revision.

Your efforts to be of assistance in these areas of concern will be very much appreciated. Sufficient changes in federal law bringing fiscal relief within this calendar year will make a reduction in maintenance and medical payments unnecessary."

A number of changes requested by the Budget Section were similar to those amendments considered by the U. S. Senate and House Conference Committee on HR 1 in October of 1972. However, final action by the Conference Committee eliminated those provisions which were of special interest to the Budget Section.

County Commissioners

After hearing reports from Social Service Board officials at the July 25, 1972, meeting forecasting the deficit in the Department of Social Services, the Budget Section, in a letter signed by the Chairman, Representative Robert F. Reimers, informed members of the Legislative Assembly of the Budget Section's findings and also informed the Chairman of all boards of county commissioners of the Budget Section's concern over rising welfare costs and stating that the Budget Section

strongly disapproves of the policy of deficit spending, and that the State Social Service Board has been given no encouragement by the Budget Section that a deficiency appropriation would receive support from the Appropriations Committees of the next Legislative Assembly. The letter to the county commissioners stated that its purpose was both to serve as a method of informing such officials of a welfare crisis in North Dakota, and to ask them to assist the State Social Service Board and the Legislature in managing and controlling the serious welfare problem that appears to be spiraling out of control.

Welfare Reductions

The State Social Service Board proceeded to review alternatives to avoid a large budget deficit. At the October 12, 1972, meeting of the Budget Section, Mr. T. N. Tangedahl, Acting Executive Director, reported that the following cuts had been taken by the State Social Service Board to avoid a $4.2 million deficit in state, county, and federal funds. The programs reduced and the amount of the reductions both in total and in state funds effective as of November 1, 1972, to June 30, 1973, are as follows:

	Total Reduction	Reduction in State Funds
Assumption by county of child care cost	$ 140,200	$ 33,000
Limit to one payment after termination of technical eligibility	17,000	4,000
Assumption by county of unmarried mother cost	12,800	3,000
Reduction of grants for Social Security increase	500,000	117,300
5% discount on all grants	807,000	201,700
10% discount on nursing home care	539,000	134,150
25% discount on all medical except hospital and nursing care	1,215,900	302,600
14-day limitation on hospital care	500,000	124,500
Payments made possible by transfer of $105,000 state funds from CCS	419,000	....
	$4,150,900	$920,250

At this same meeting, Mr. Harvey Hanson, representing the North Dakota Hospital Association, asked the Budget Section to encourage the Social Service Board not to put the reductions into effect, with such encouragement being supported by Budget Section support for a deficiency appropriation for the Department of Social Services shortly after the Forty-third Legislative Assembly convenes. Mr. Hanson and the Social Service Board were advised that the Budget Section was sympathetic to the problems of the Social Service Board, but that it does not have statutory authority to commit members of the next Legislative Assembly to a deficiency appropriation to the Service Board. Welfare officials attending the meeting said they plan to proceed in a manner so that expenditure levels will be within amounts appropriated by the Legislature.

PERFORMANCE REVIEWS

The Budget Section contracted with Eide, Helmeke, Boelz and Pasch, Certified Public Accountants, and Broeker Hendrickson and Co., Certified Public Accountants, both firms having offices in Fargo and in Bismarck, to conduct performance reviews of the North Dakota Department of Public Instruction and the Department of Agriculture. The purpose of the performance reviews of the two Departments was to:

1. Analyze the management functions and the organizational structure of the Departments to determine the efficiency and effectiveness thereof; and to make recommendations for change where significant improvements are possible;
2. Determine the efficiency and effectiveness of the accounting and budgeting systems of the Departments, and to make recommendations for change where significant improvements can be made therein; and
3. Review the constitutional and statutory duties and responsibilities of the department and of its chief officer, along with other documents setting forth legislative intent for the purpose of determining performance.

The performance review report prepared by Eide, Helmeke, Boelz and Pasch, contained the following recommendations which the firm said should receive top priority within the Department of Public Instruction's planning function:

1. Establish objectives for attainment of defined goals;
2. Formulate procedures required to meet goals and objectives; and

3. Assign the steps in the various procedures to organizational units and individuals as definite responsibilities.

Other recommendations made by the firm include:

1. Distribute to all employees the organizational chart developed during the performance review;
2. Have position descriptions developed for all personnel;
3. Set performance standards for each Department's activities;
4. Develop a system of progress review; and
5. Develop a comprehensive personnel handbook.

To improve the Department of Public Instruction's budget process, the firm made the following recommendations:

1. Carefully review and check budget requests before assembling into final form to eliminate all mechanical discrepancies therefrom;
2. Prepare an index for and number the pages of the budget requests so summary totals and detailed supporting information can be referenced one to another; and
3. Provide greater narrative justification for departmental programs and activities.

The report recommends that the Superintendent of Public Instruction's office either collect or require the colleges and universities of the State to collect the $5.00 teacher certification fee for graduating teachers. According to the report $48,375 of revenue has been lost by the State of North Dakota during the last six years because teacher certification fees haven't been collected. The firm also reported that the Department was not in compliance with legislative intent in the handling of the state-matching portion of the Federal School Lunch Program. The Department had planned to transfer $200,000 from the State Foundation Program for school lunch purposes; however, federal rules and regulations provided that moneys already in the Foundation Program could be considered as satisfying school lunch matching requirements. The report states that the Department has taken the corrective action necessary in this matter. Over a period of three bienniums, this finding could save the State of North Dakota an estimated $900,000.

The performance review report on the Department of Agriculture prepared by Broeker Hendrickson and Co. contained the following recommendations accepted by the Budget Section:

1. Establish goals and performance evaluation methods for the dairy inspectors.
2. Strongly support reciprocity dairy inspections among states.
3. Improve methods and procedures to inspect livestock dealers.
4. Charge fees for dairy product tests made, plus consider the addition of a laboratory technician to perform many such tests.
5. Eliminate redoing addressograph plates for livestock brands.
6. Eliminate the position of Assistant Brand Recorder.
7. Analyze inspection requirements and needs in the Apiary Department.
8. Eliminate several monthly disbursement checks in Predatory Animal Control.
9. Implement various accounting and office function improvements.
10. Prepare more informative budget requests.
11. Develop short-term and long-range objectives throughout the Department.
12. Develop a Marketing Bureau Division.
13. Increase the Commissioner of Agriculture's involvement in promoting agricultural products and active participation on specific boards and commissions.

Bills recommended by the Budget Section resulting from hearing the performance review reports relate to the Superintendent of Public Instruction's authority to limit certain school construction and State Seed Department voucher-handling procedures in the Department of Agriculture. Section 2 of Chapter 189 of the 1969 Session Laws of North Dakota, the provisions of which expire on June 30, 1973, allows the Superintendent of Public Instruction to approve only those school construction projects in excess of $25,000 that he shall find fully or substantially usable by any reorganized school district which in his judgment is likely to be created and which would encompass all or a major portion of the school district applying for approval of the building project. The bill recommended by the Committee removes the June 30, 1973, expiration date of the present law. The other bill recommended by the Committee removes the requirement that the Commissioner of Agriculture sign the State Seed Department invoices. Other recommendations for legislation arising from

the report on the Commissioner of Agriculture called for closing the $45,000 grasshopper control fund in the Bank of North Dakota and upgrading the livestock dealers' licensing and bonding laws. Bills in regard to these recommendations are being recommended by the Legislative Audit and Fiscal Review Committee.

The Budget Section has received many inquiries for copies of the performance review reports. The General Accounting Office in Washington expressed interest in the reports and asked for additional copies to present to the American Institute of Certified Public Accountants as examples of the type of work that private accounting firms could provide state and local governments. The General Accounting Office has also made reference to the two performance reviews in seminars it has had on governmental accounting with governmental officials and representatives of private firms.

TOUR GROUPS

During the week of September 18-21, 1972, and on October 11, 1972, members of the Budget Section visited the major state institutions and projects. The main purpose of the visitations was to determine and evaluate requests for funds in the areas of land, structures, and major improvements. In addition, however, Budget Section members learned much about the programs offered by the institutions visited. The Budget Section was divided into three separate Tour Groups. The members of each Tour Group and the institutions which they were assigned to visit are as follows:

Tour Group No. 1 — Senator Earl Redlin, Chairman

MEMBERSHIP	INSTITUTIONS VISITED
Senators:	
Frank Wenstrom	State Hospital
H. Kent Jones	Valley City State College
Evan Lips	School of Science
Lester Larson	Soldiers' Home
	School for the Deaf
Representatives:	Fort Totten Historic Site
Howard Johnson	
Mike Olienyk	
Charles Mertens	
Enoch Thorsgard	
Halvor Rolfsrud	

Tour Group No. 2 — Representative Oscar Solberg, Chairman

MEMBERSHIP	INSTITUTIONS VISITED
Senators:	
I. J. Wilhite	State Industrial School
Dave Robinson	State Penitentiary and Farm
Representatives:	Dickinson State College
Bert Miller	Dickinson Experiment Station
LeRoy Hausauer	UND - Williston
Ernest Miedema	Williston Experiment Station
Olaf Opedahl	North Central Experiment Station
James Peterson	State Fair Association
Kenneth Tweten	Minot State College
Glenn Henning	San Haven State Hospital

Tour Group No. 3 — Representative Robert Reimers, Chairman

MEMBERSHIP	INSTITUTIONS VISITED
Senators:	
Robert Melland	North Dakota State University Cooperative Extension Service Main Experiment Station
C. Warner Litten	
Oscar Sorlie	
Paul Swedlund	
Representatives:	Mayville State College
Herbert Anderson	School for the Blind
Dale Linderman	University of North Dakota
Harley Kingsbury	Mill and Elevator Association
Vernon Wagner	
Clark Jenkins	Grafton State School
	Carrington Experiment Station
	Lake Region Junior College
	Devils Lake Human Service Center

During the Budget Section meeting held in Devils Lake at Lake Region Junior College on October 12, 1972, Tour Group Chairmen reported the highlights of their tours to the Budget Section. Detailed accounts of each Tour Group's activities are on file and available at the Legislative Council office.

Action taken and opinions expressed at the Devils Lake meeting resulting from Tour Group reports included the following:

1. Extend an invitation to the Board of Higher Education to meet with the Budget Section at its December meeting to discuss plans which the Board has to stabilize and increase Mayville State College's enrollment.
2. Convey to appropriate architectural and engineering organizations the Budget Section's desire for greater accountability and for an upgrading of the quality of their members' professional services to the State to avoid future problems similar to some of those seen on the tours.
3. Inform the Superintendent of Public Instruc-

tion of the Budget Section's discovery of what it believes to be a questionable use of Department of Public Instruction federal funds, and that members of the Budget Section do not support projects which are either of excessive cost or will be utilized very little, even if the funding is federal. This comment relates to a seldom-used playground at the Grafton State School which was built at a cost in excess of $28,000, and a raised map at the School for the Blind which was purchased at a cost of $1,500.

4. Members of the Budget Section expressed their concern over the lack of what they believed to be sufficient involvement on the part of the Social Service Board, the Board of Higher Education, the Director of Institutions, and the Industrial Commission in the operation of institutions and offices under their direct control.

5. The need for greater state coordination in the development of community colleges in the future. Budget Section members pointed to a lack of coordination in the development of programs on the community college level and the state college level. This lack of coordination, they believed, could lead to very serious problems. This topic is to be discussed with the Board of Higher Education when the Budget Section meets in December.

On May 5, 1972, a Subcommittee, the members of which are Representatives Robert Reimers, Charles Mertens, and Bert Miller; and Senators Earl Redlin and Oscar Sorlie, visited NDSU-Bottineau Branch to tour the institution and to determine whether the Budget Section should make recommendations in regard to whether the proposed science building should be constructed. NDSU-Bottineau Branch officials emphasized the need for the Environmental Science Center, a building estimated to cost $480,000. It was reported that $204,000 of the $240,000 in federal funds available to fund the project, if not committed to the NDSU-Bottineau Branch project before June 30, 1972, would revert to the Federal Government. The remaining $37,000 in federal money could be used for some other project in the State, it was stated. The Subcommittee recommended that the Board of Higher Education proceed in its best judgment in regard to the construction of the Environmental Science Center, and that the Budget Section take no action in regard to the project. The action of this Subcommittee was approved at the next regular Budget Section meeting.

SUPPLEMENTAL REPORT

This report presents the activities and recommendations of the Committee on Budget (Full Budget Section) and its Tour Groups during the interim. Since one of the major responsibilities of the Committee is to review the Executive Budget, which by law is not presented to the Committee until after December 1, a supplement to this report on the final phase of the activities of the Committee will be submitted for distribution at a later date.

BUDGET "A"

The Committee on Budget "A" was assigned Senate Concurrent Resolution No. 4027, which calls for a study of all printing laws, requirements, and practices of the State of North Dakota and its political subdivisions. Appointed to the Committee were Senators Robert Melland, Chairman, Lester Larson, and Paul Swedlund; and Representatives Glenn Henning, Howard Johnson, Charles Mertens, Bert Miller, Mike Olienyk, and Enoch Thorsgard.

The report of the Committee on Budget "A" was submitted to the Legislative Council at the biennial meeting of the Council held at Camp Grafton. The report and recommended legislation were adopted for submission to the Forty-third Legislative Assembly by the Legislative Council in November, 1972.

A review of similar studies in other states, and the wording of Senate Concurrent Resolution No. 4027, indicates two distinct areas which could be studied individually or combined into one comprehensive study. The first area could be termed state printing. This would include not only office material such as stationery and forms, but also materials such as annual or biennial reports, study reports, findings of fact, statistical compilations, and a myriad of other material required either by law or custom to be reproduced in some manner and distributed. The other area includes all the state and local laws requiring the printing of various notices, reports, minutes, and other similar items in newspapers or magazines by various state agencies, political subdivisions, including such local units of government as school boards and city councils.

It is difficult to discuss state printing without some understanding of the various classes of printing. Section 46-02-04 of the North Dakota Century Code divides state printing into six separate classes:

1. The first class of printing is legislative bills and resolutions, the bids for which are let by the Department of Accounts and Purchases.
2. Second-class printing consists of the House and Senate Journals. These are also let on competitive bids by the Department of Accounts and Purchases.
3. Third-class printing is a large and nebulous grouping of all reports and similar material, either mandatory or voluntary, prepared by state officers, departments, agencies, boards, commissions, etc. The bids for these reports are let by the Department of Accounts and Purchases.
4. The fourth class of printing consists of law volumes, primarily Session Laws, the bids for which are let by the Department of Accounts and Purchases.
5. The fifth class of printing was the now defunct publicity pamphlet which was repealed by the 1965 Legislative Session.
6. The sixth class of printing includes all printing not included in the previous five classes.

It is customary to let contracts for first class, second class, third class, and fourth class-printing to a particular printer, rather than having each separate job which may fall under one of the classes go to a different printer. The vagueness of the definitions of third and sixth-class printing has led to considerable confusion among both state officials and the State's printing industry. There have been at least two letters from the Attorney General trying to clarify this grey area. The distinction between third and sixth-class printing is important, since third-class printing must be let by the Department of Accounts and Purchases, while sixth-class printing is let on an individual basis by the departments or agencies concerned, and may or may not be let on bids. Each department or agency head may let sixth-class printing to any commercial printer or he may choose to have it done by the State Central Duplicating Service, if it can handle the job. Before a sixth-class printing job is let, however, it must be submitted to the Department of Accounts and Purchases, which determines a reasonable maximum cost for the job. The basis for determining a reasonable job is the Franklin Printing Catalogue. Once the reasonable maximum has been determined, the job then can be let by the individual department or agency, but the cost cannot exceed the maximum provided by the Franklin Printing Catalogue.

PRINTING SURVEY

To assist the Committee in its review of printing practices and procedures of North Dakota State Government, the Legislative Council staff conducted surveys of printing equipment owned, the amount of printing purchased, and the types of reports and publications printed for state agencies, departments, and institutions. Summaries of detailed reports which are available and on file in

the Legislative Council office are provided in this report. As of June 30, 1971, according to the report entitled "Survey of State Printing", the total annual cost for the year then ended to the State for leasing printing and duplicating equipment was $81,988, with the total cost of equipment owned by the various state agencies and institutions on June 30, 1971, amounting to $561,409.

The second portion of the report estimated printing costs of $2,548,358 to the State for the 1969-71 biennium. Of this total, $809,606 was done on the agencies own equipment, $128,095 was done by Central Duplicating Service, and $1,590,774 was done by private printers. A miscellaneous category took care of the remaining $19,882. The third section of the survey presented a listing of reports and other items printed for each department, agency, and institution for the biennium ended June 30, 1971. Information relating to each item printed indicated the number of copies printed, the number of pages, the total cost, who printed it, and whether or not it was bid.

The final section of the report presented an analysis of high and low bids on selected state printing projects during the 1969-71 biennium. The analysis presented information on 17 printing projects. A total of high bids for the 17 projects amounted to $45,697 compared to the total of low bids of $33,490. The difference of $12,207 between the high and low bids is equal to 27 percent of total high bid costs. The purpose of this analysis was to indicate the potential for saving state funds in the many instances where projects are not bid. The printing jobs included in the analysis were sixth-class printing where competitive bidding is not required. The Committee received testimony from the Department of Accounts and Purchases' officials indicating that the cost of sixth-class printing work can be reduced by 25 percent where jobs are bid. The volume of sixth-class printing during 1970 amounted to $568,850.84.

AGENCY PUBLICATIONS

At the April 6, 1972, meeting, the Legislative Council staff presented "A Survey of State Department and Agency Publications". The survey, handled on a questionnaire basis, called for information from state departments and agencies about newsletters, magazines, and voluntary publications. Information requested about each publication included the number of issues per year, the number of copies, the distribution, and the cost of a typical issue. The report, copies of which are available at the Legislative Council office, included 65 different newsletters, magazines, and other publications. The majority of such publications are distributed either on a monthly or quarterly basis (19 on a monthly basis and 22 on a quarterly basis). The total cost of printing one issue of each publication exceeded $28,000. Based upon the information contained within the report and upon testimony received from the state departments and agencies regarding their publications, the Committee recommends that state departments and agencies consider the following practices in regard to their newsletters and other publications:

1. Compare the cost of the use of the Central Duplicating Service of the Department of Accounts and Purchases with alternative methods of reproduction. For example, the Franklin Printing Catalogue price for direct image work for 500 copies amounts to $11.70 while Central Duplicating will do the same work for $3.50.
2. Purchase postage at third-class bulk rate. The minimum charge per piece for bulk rate is 5¢ compared to 8¢ per piece for other third-class mail. It appears that the following agencies could save money by using bulk rates: Department of Agriculture, Department of Business and Industrial Development, Fire Marshal, Garrison Diversion Conservancy District, Highway Patrol, Library Commission, Outdoor Recreation, Radio Communications, Securities Commission, and the State Laboratories Department. An estimated 120,000 newsletters and bulletins are mailed other than under bulk rate by these offices each biennium. At the bulk rate, which is at least 3¢ less per piece than other available third-class or first-class postage, savings approaching $2,800 per biennium are possible.
3. Print copy on both sides of the sheet of paper. At Central Duplicating Service, for 500 copies of a report consisting of two printed pages, the price would drop from $7.00 to $4.75 if one sheet of paper is used rather than two. This, of course, would also reduce weight and could result in less postage.
4. Keep to a minimum the reprinting of articles which have already been included in publications to which the reader may have access.
5. Consider distributing publications on a less frequent basis. It may be possible to achieve the same results by publishing on a bimonthly or quarterly basis rather than on a monthly basis, etc. Such changes could substantially reduce postage costs.
6. Since many mailings could include additional weight without increasing postage, when-

ever possible departments should participate in joint mailings with other divisions or departments.

7. Periodically evaluate the effectiveness and need for the publication. A survey of reader interest and use might point out ways to achieve the same purposes at less cost.

REQUIRED REPORTS

Present law requires 17 state agencies and departments to submit biennial reports to the Governor and the Secretary of State by October 1 before each Legislative Session. Twenty-five copies of each of these 17 reports are printed under the supervision of the Secretary of State and are bound in volumes known as "Public Documents". In addition to the 25 copies required to be printed, these agencies and departments are entitled to have additional copies printed in the event such printing is approved by the Secretary of State. All other governmental entities required by law to submit reports to the Governor and the Secretary of State must likewise do so by October 1 prior to the Legislative Session. The Secretary of State prepares 16 copies of these reports and binds them into volumes known as "Biennial Reports of Administrative Agencies and Boards". Additional copies of these reports may be printed or reproduced for the departments and agencies at their request and expense. All governmental entities required by law to make annual or biennial reports, except the institutions under the Board of Higher Education, are required to include in such reports a listing of employees' salaries.

The Legislative Council staff presented a report entitled "Reports Required of State Agencies and Departments" which included a listing of 67 different reports required by law or administrative rules and regulations. The cost of the last printing for such reports approached $95,000, with a total of 86,000 copies printed.

The Committee expressed interest in an analysis of the reports included in the Public Documents. In response to this, Mr. Richard Wolfert, State Librarian, presented a report to the Committee entitled "State Agency Reports: Purpose, Utilization, and Historic Value". The 25-page report is on file and available in the Legislative Council office. Specific recommendations contained within the report are:

"1. We recommend repealing restrictive legal requirements for binding specific biennial reports into compiled volumes.

2. If compilation of reports is continued, we suggest that only one title be used to cover annual and biennial reports of all administrative agencies, and that each volume include a title page, table of contents and index. Each agency report should also have its own title page, table of contents, and index to aid readers, researchers, and subsequent report writers.

3. Consistent annual reporting for all state agencies, institutions, boards and commissions would be preferable to the current uneven requirements.

4. We suggest that there be more copies of single agency reports for improved availability and wider distribution.

5. If statistical tables, financial statements, charts and graphs are to be included in periodic reports, they should be accompanied by narrative explanation to point up the significance of the data presented.

6. Agency annual and biennial reports of this nature should not include **in detail** financial reports submitted regularly to meet other reporting requirements (i.e., budget and audit reports).

7. We recommend that the payroll listing requirement be abolished as it has been from the reports of the institutions of higher learning.

8. With the flexibility and relatively inexpensive new methods of offset reproduction and photocopying, we recommend that no requirement be made to have the reports printed. We also question the value of standardizing size of page, kind of paper stock, and other limitations established because of printing and binding requirements.

9. We recommend that a committee of selected administrative officers and legislative representation be established to set minimum requirements for all state administrative agency annual reports, and that a manual of guidelines for report writing be issued to help administrators in the preparation of such reports. We suggest a committee composed of representation from the Governor's staff, the Secretary of State's office, the Historical Society, the State Librarian, and the State Printer as consultant or member. A staff member from the Legislative Council could assure that the report requirements would serve the needs and expectations of the Legislature."

The Committee recommends a bill making a

number of changes in regard to biennial reports required of state agencies and departments and included in the "Public Documents". Several other state agencies and offices must also report at the same time and for the same period, but their reports are merely compiled by the Secretary of State as "Biennial Reports of Administrative Agencies and Boards". They are not printed and bound. This bill changes the due date for reports to December 1 following a regular Legislative Session. The reporting period remains the preceding two fiscal years, but the two-year period will now be the same as the biennial period. This bill would eliminate the two classifications of reports. All reports would be compiled by the Secretary of State as "Governmental Biennial Reports". This bill would create a committee composed of the Secretary of State, the Governor, the Superintendent of the State Historical Society, the State Librarian, and the Director of the Department of Accounts and Purchases to set minimum requirements and to establish guidelines for the form, style, and content of these reports. The bill would repeal Section 44-04-08, which requires a detailed salary listing in each of these reports.

NEWSPAPER ASSOCIATION

Representatives of the North Dakota Newspaper Association regularly attended meetings of the Committee and made the following recommendations to the Committee for study:

1. Earlier publication of legal notices.
2. Require city commission forms of government to publicize proceedings of meetings.
3. Develop guidelines for content and uniform methods for presentation of legal notices.
4. Increase the rate for legal notices and increase the typesize for the same.

The Committee recommends a bill to amend Sections 11-11-37, 15-28-11, and 40-08-12, and to create a new section requiring that minutes for proceedings of political subdivisions which are required by law to be published must be delivered to the newspaper within seven working days of the proceedings. A newspaper must publish this material within ten days of receipt of the copy. Presently, boards of county commissioners and city councils must deliver their copy 30 days after the meeting at which the report is read and approved, and school boards must publish their proceedings as soon as copies are available after the meetings. Representatives of the North Dakota Newspaper Association believe that notices can and should be published much earlier than 30 days to be of real value to readers.

Legal Publications Handbook

The Committee received testimony from representatives of the North Dakota Newspaper Association and the Department of Accounts and Purchases illustrating differences in the form and content of legal notices. Mrs. F. J. Froeschle, Publisher, Ransom County Gazette, Lisbon, North Dakota, illustrated the wide difference in the form and content of legal notices by distributing copies of county budgets as published in the different newspapers. The samples range from large display ads with numerous columns to small ads with the information in summary form. She recommended uniformity and improvement in the content of legal notices. In her opinion, government has the responsibility to keep the public informed of governmental activities. Mr. Gene Carr, Executive Secretary of the North Dakota Newspaper Association testified on numerous occasions on the need for guidelines for legal publications.

The Committee recommends a bill amending Section 46-01-02 regarding the printing duties of the Department of Accounts and Purchases. The principal change is the addition of a requirement that the Department prepare a legal publications handbook containing samples of legal advertising, legal notices, proceedings, and other such items, including sample voting machine and paper ballots, required or published by state governmental entities or political subdivisions. The handbook would contain guidelines for form, style, and content. It would be prepared with the advice of a committee composed of the Director of the Department, the Director of the Department's Central Duplicating Service, the Secretary of State, the President of the Printing Industry of North Dakota, the President of the North Dakota Newspaper Association, and the President of the North Dakota County Auditors Association.

Sample Ballot

The Committee is also recommending a bill providing that the sample ballots published in weekly and daily newspapers conform in form and style to samples contained in the legal publications handbook. This requirement does not go to the content of the ballot, but merely to the size of type, number of newspaper inches and columns used, blank spaces, etc. The bill also provides that where both voting machines and paper ballots are used, county auditors must publish samples of both the paper ballot and the ballot as it will appear to voters using voting machines. If only voting machines are used, or if only paper ballots are used, then only that form would have to be published as a sample ballot.

Legal Newspaper

In response to the need to clarify the legal definition of a newspaper, the Committee recommends a bill to amend Sections 46-05-01 and 46-06-02 of the North Dakota Century Code, relating to the definitions of legal and official newspapers. A legal newspaper is any newspaper in the State qualified to publish legal notices or other matter required by law. An official newspaper is the official newspaper of a particular political subdivision, such as a county or city. State law in some instances requires that certain notices or advertisements be published in any newspaper, and in other instances, in an official newspaper. There are now certain minor differences between the two definitions. This bill would make the two definitions identical, except that an official newspaper would have to maintain its principal editorial office within the county in which it is a candidate for official newspaper.

Rate Increase

The proposal for the rate increase by the Newspaper Association called for increasing the legal rate per line for the first legal notice from 16 cents to 18 cents and from 9 cents to 14 cents on subsequent insertions, and allow the use of 9-point, rather than 6-point type. The proposal also provided the fees for the first insertion of lines containing tabular matter, leaderwork, or work containing one or more columns of figures, be computed at 150 percent of the rate for straight matter, and that fees for legal publications requiring open display printing, be computed on the basis of nine lines per inch of depth. It also provided that whenever a newspaper had an open display advertising rate greater than this rate, it may substitute that rate for the open display legal publications rate. According to information presented to the Committee by Mr. Gene Carr, Executive Secretary of the North Dakota Newspaper Association, the estimated income to North Dakota newspapers from publications of county, city, school, and state legal ads for the years of 1970 and 1971 is as follows: 1970, $286,907.84, and 1971, $218,833.62. In Mr. Carr's opinion, the proposed increase would increase newspaper revenues for legal ads by about 30 percent. According to information submitted to the Committee by the Department of Accounts and Purchases, the increases in cost to the State and the political subdivisions range from 50 percent to 78 percent for the first publication of many legal ads presently printed in 8-point type, and even greater increases for other legal ads. The Committee did not recommend legislation to require the city form of government to publicize proceedings of meetings, nor is it recommending legislation which would increase the cost of legal notices to the State or its political subdivisions.

Oil and Gas Leases

Mr. Jack Swenson, representing the North Dakota Petroleum Council, requested consideration of legislation relating to the publication of notices regarding the leasing and sale of certain state lands for oil and gas exploration purposes. It was reported that it is impossible under present law, for a state agency to lease land when an error occurs in an advertisement for a lease. This legal requirement has unnecessarily cost the State, in Mr. Swenson's opinion, over a million dollars in business during the last few years. He was also of the opinion that many private investors have quit doing business in North Dakota because of rigid legal requirements pertaining to the publication of legal notices. The Committee recommends a bill which would amend Sections 15-04-09, 15-06-25, 15-07-05, 38-09-15, and 54-01-05.2 regarding the legal notices required before the leasing and sale of certain state lands and mineral rights. It would allow the lease or sale to proceed as scheduled, despite the fact that a required notice was inadvertently omitted by any newspaper or, if it was published, that it contained typographical errors. To proceed, however, it would first have to be determined that the omission or error was not prejudicial to the State's interest.

Game and Fish Proclamations

Mr. Russell Stuart, Commissioner of the State Game and Fish Department, brought to the Committee's attention the $30,000 per biennium spent by the Department for the publication of legal notices. He said that hunting and fishing proclamations must now be printed in every county newspaper, even though the printing of such is not recognized as being sufficient notification for prosecution in the event of game violations. To satisfy legal requirements, Mr. Stuart reported that approximately 200,000 proclamations are printed for distribution at the time of hunting license or fishing license sales. He suggested that the Game and Fish Department no longer be required to have the publications printed in the 53 county newspapers since he does not believe it serves a worthwhile purpose or is of sufficient value to continue the practice. The Committee recommends a bill to amend Section 20-08-04 of the State's game and fish laws to eliminate the requirement that the Governor's hunting and fishing proclamations be published in each county newspaper in the State. Instead, this bill would require that a printed form of these orders and proclamations be made avail-

able for distribution to any person upon request in the county courthouse in each county, with each license sold, and from the Game and Fish Department.

STATE PRINTING

Printing Industry of North Dakota

At the April 6, 1972, meeting of the Committee, the Printing Industry of North Dakota filed a position statement. Copies of the statement are available and on file in the Legislative Council office. One of the main points covered was that it is the position of the Printing Industry that extensive printing work by a state department is undesirable because, with only an occasional exception, there is no printing work required by the State or any of its agencies or departments which cannot be done on a competitive bid or other reasonable basis by private printers.

Central Duplicating Service

The state department which does the printing referred to by the Printing Industry of North Dakota is the Central Duplicating Service in the Department of Accounts and Purchases. Section 54-44-04 (23) of the North Dakota Century Code authorizes the Department to establish a Central Duplicating Service.

For the year ended June 30, 1971, the direct administrative and operating costs of the Department amount to $76,497.97, with total collections for the same period of time of $70,899.02. Although the title of State Printer is still sometimes used, there is actually no such office. The Office of State Printer was repealed at the 1959 Session. The types of duties formerly handled by the State Printer are now handled by the head of the Department of Accounts and Purchases Printing Division. The Division has charge of all printing sent to commercial printers. Contracts are let, orders are received, recorded, priced, and properly executed according to law. All legal notices published by state departments are checked to see that the legal rates according to law are charged by the newspapers. When requested by county officials, legal notices and publications printed by counties are checked for correct pricing.

In 1968, most of the work of the 130 various duplicating machines located throughout the State Capitol were centralized in one location and any requests for new machines were reviewed by the Department of Accounts and Purchases. By centralizing, the noise problem has been eliminated, departments which had equipment now have room available for office space, and the State has been saved the expense of operating under-utilized equipment. Central duplicating service is available to all state departments. It is equipped with duplicating, collating, folding, stapling, and drilling equipment to handle the small rush orders which are not economically feasible to send out to the commercial printers. The savings are substantial.

At the October 24, 1972, meeting of the Committee, representatives of the Printing Industry of North Dakota asked the Committee to consider legislation to require the Department of Accounts and Purchases to appoint a practical, expert printer who has experience as an estimator of printing to the position of Director of the Central Duplicating Service and specify that "duplicating" shall mean processes so defined by the Joint Committee on Printing of the Congress of the United States. They also recommended the establishment of a State Printer's Advisory Board of three members to be appointed by the Director of the Department of Accounts and Purchases to assist him in administering the Central Duplicating Service.

According to Department of Accounts and Purchases officials, the application of the federal rules and regulations to the office of Central Duplicating could reduce the output of the Department by one-third and require the removal of seven or eight pieces of equipment from the Central Duplicating office. It was also explained that the Executive Budget detail books and the daily printout of bill status reports to the legislative branch during the Legislative Session could not be handled by the Central Duplicating office should the federal definition of duplicating be applied to the office. According to a survey conducted by the Department of Accounts and Purchases, of the 33 states, all but four states have central departments similar to the one in North Dakota, and no department is subject to the definitions of printing and duplicating as provided by the Joint Committee on Printing of the Congress of the United States. The Committee decided not to recommend the legislation proposed by the Printing Industry. The Committee Chairman encouraged the representatives of the Printing Industry to make their views known to the Appropriations Committees when the budget of the office of Central Duplicating is heard since this is the appropriate time for setting the direction and scope within which the Department should operate, he said.

Legislation Recommended

The Committee recommends a number of bills affecting the classification of printing and the man-

ner in which firms to do printing work should be selected.

The first bill would amend Section 46-02-09 concerning the printing of sixth-class items. Current law allows each state department and agency to let its sixth-class printing jobs to any printer in the State. At present the Department of Accounts and Purchases is supposed to see each printing order before it is let to determine the reasonable maximum price for the job. This bill would delete this requirement and would instead require that all sixth-class work not done by the Department of Accounts and Purchases must be let through competitive bidding or the solicitation of at least two quotations. The work could still be done by any firm the state department or agency would select. The bids or quotations could be solicited by the agency for whom the work is being done, or, at the agency's request, by the Department of Accounts and Purchases. The maximum allowable price for sixth-class work would remain the same, i.e., it could not exceed Franklin Printing Catalogue cost as determined and fixed by the Department of Accounts and Purchases.

The next bill would amend Section 54-44.1-08 to provide for the duplication, printing, or other satisfactory reproduction of the official budget report. This would formalize an existing practice.

The Committee also recommends a bill to amend Section 46-02-04 concerning the definition of classes of state printing. The first class now includes all legislative bills and resolutions. This bill would amend that section to allow certain bills and resolutions to be excepted from the class as directed by the officers of the Legislative Assembly or as provided for in the Rules of the Senate and the House of Representatives. The third class now includes the voluntary and required reports of various state agencies and departments. This bill would amend that definition to include only the reports and other documents required by state law to be prepared and submitted to the Governor and the Secretary of State.

Another bill recommended by the Committee would amend Section 46-02-15 concerning where public printing is done. The law now requires that all state, county, and other public printing be done by businesses established at least one year in this State, and that, where practicable, such printing shall be awarded to established firms in the county for which such printing is required if the rates are within 10 percent of the price obtainable from a printing shop outside the State. This section would be amended to state simply that where practicable, all state, county, and other political subdivision printing shall be done in this State.

The next bill would repeal Section 46-03-06 concerning the printing of legislative calendars, thus leaving their publication up to the Legislative Assembly. This will formalize the manner in which legislative calendars were handled during the 1971 Legislative Assembly.

BUDGET "B"

Senate Concurrent Resolution No. 4074 directed the Legislative Council to study the laws governing the fiscal practices and procedures of the Board of Higher Education and the institutions under its control for the purpose of unifying and streamlining such practices and procedures.

This study was assigned to the Committee on Budget "B", consisting of Representatives Oscar Solberg, Chairman, LeRoy Hausauer, Harley R. Kingsbury, Ernest J. Miedema, Olaf Opedahl, James A. Peterson, Kenneth Tweten, Vernon E. Wagner; and Senators Earl H. Redlin, Dave M. Robinson, Oscar J. Sorlie, and I. J. Wilhite.

The report of the Committee on Budget "B" was submitted to the Legislative Council at the biennial meeting of the Council held at Camp Grafton. The report and recommended legislation were adopted for submission to the Forty-third Legislative Assembly by the Legislative Council in November 1972.

STUDY OF HIGHER EDUCATION FISCAL PRACTICES

The basic procedures controlling college and university fiscal practices date back to 1937. Such institutions have changed and improved internal control over fiscal practices since that time; however, many statutory requirements in effect are basically the same as they were in 1937.

After hearing testimony from representatives of the Board of Higher Education, the colleges and universities, and the Department of Accounts and Purchases on the need to update statutes governing higher education fiscal practices, the Committee asked the office of the Board of Higher Education to request the business managers of the various state colleges and universities to suggest improvement and to develop a plan for improved higher education fiscal practices. At the direction of the Board of Higher Education, the business managers established the State Institutions of Higher Education Fiscal Procedures Subcommittee, consisting of Mr. Gerald Skogley, Chairman, Mr. Donald Stockman, Mr. Evert Scholten, and Mr. G. V. Patterson, to develop and present the business managers' recommendations for improved fiscal practices. The business managers proposed the following recommendations:

1. Substitute more timely and efficient procedures in lieu of filing of abstracts for the procurement of funds from the State Treasury with the Board of Higher Education and the Department of Accounts and Purchases. The business managers proposed that moneys be transferred on a regular basis from the institutions' operating funds to accounts in the Bank of North Dakota. An alternative proposed was to authorize the colleges and universities to submit abstracts for funds based upon checks already written and distributed by the institutions.

2. Provide authority to the colleges and universities to transfer from one line-item in the budget to another without Emergency Commission approval. Current law requires that each institution apply to the Emergency Commission before transfers can be made.

3. Change the format of the appropriations bills from an object line-item basis to the functional basis. The business managers maintained that the budget could be presented in a more meaningful manner if primary emphasis were placed on the functions of the institutions. In this instance, some progress has been made, since the last Governor's budget included both an object and a functional-type budget.

4. Streamline travel expense reimbursement procedures. The business managers proposed that travel expenses be reimbursed by the State in the same manner as other obligations. They questioned the need for authorization from both the Board of Higher Education and the Governor's office for out-of-state travel.

5. Amend printing laws to allow the institutions to contract for printing without prior approval of the State Printer because of adequate purchasing procedures at the institutions.

6. Continue the practice of providing the office of the Board of Higher Education and the Department of Accounts and Purchases copies of the payroll journals from each institution on a monthly basis.

7. Clarify the college and university administrators' authority and liability in regard to the investment of endowment funds.

8. Provide authority for the colleges and universities to maintain local bank accounts for the cashing of checks and the accumulation of funds for transfer to the State Treasury or the Bank of North Dakota.

Senate Concurrent Resolution No. 4027, which directed the Legislative Council to study the State's printing laws, requirements, and practices was assigned to the Committee on Budget "A". The business managers' recommendation calling for changes in printing procedures for the state colleges and universities was therefore referred to the Committee on Budget "A" for its review.

The Committee heard testimony from representatives of the Department of Accounts and Purchases regarding the business managers' recommendations. The Department representatives discouraged handling of travel vouchers locally without being submitted to and reviewed by the Department of Accounts and Purchases. The Committee was advised that Section 54-06-08.1 of the North Dakota Century Code now provides sufficient authority for the maintaining of accounts in local banks for the purposes of check cashing and to accumulate funds for transfer to the State Treasury or to the Bank of North Dakota.

In order to provide additional information for the study, the Legislative Council staff reviewed the accounting records relating to the colleges and universities maintained in the Board of Higher Education office in Bismarck. In addition, visitations were made to Dickinson State College, North Dakota State University, University of North Dakota, Mayville State College, and Valley City State College to review the relationship of the records maintained at those institutions to those maintained at the Board's office in Bismarck.

Recommendations

The comments and recommendations arising from that review were as follows:

1. The budget records maintained by the Board of Higher Education office duplicate those maintained at the institutions. The colleges and universities could produce reports for the Board's office eliminating the need for much of the accounting effort in the Board's office. The Board should periodically audit the reports from the various campuses to check their accuracy.

2. Certain sections of state law prescribe or set forth requirements for processing of abstracts and vouchers. Since current practices vary from those required by law, the Council staff recommended either changing procedures or amending the law to reflect current practices.

3. The Board's office should discontinue summarizing and posting each college and university travel voucher. Reports from the institutions should be filed with the Board to make possible its review of travel expenditures.

4. Uniform procedures should be established for the transfer of funds from the general fund to the various institutional operating funds.

The Commissioner of Higher Education supported the recommendations made by the Council staff. The Commissioner also supported the change calling for the routing of vouchers and abstracts directly from the institutions to the Department of Accounts and Purchases.

Based upon recommendations of the State Institutions of Higher Education Fiscal Procedures Subcommittee and the Council staff, the Committee recommends legislation to streamline the fiscal practices in the Board of Higher Education office and to discontinue the Board's office maintaining financial records which are also maintained at the colleges and universities. The bill provides that abstracts of expenditures and payrolls prepared by the colleges and universities be submitted directly to the Department of Accounts and Purchases rather than first being submitted to the Board office, as is the current practice. The review of abstracts and vouchers by the Board office is limited to clerical and other related items and does not add an element of control. Internal control in effect at the institutions and annual audits by Certified Public Accountants eliminate the need for a duplication in processing which at one time may have been justified. By discontinuing the Board's review of vouchers and abstracts, the time spent in processing payments can be reduced. Also, the Board employees who currently review and examine the abstracts and vouchers of the institutions could be utilized in other more important projects of the Board. The bill also provides that the Board shall require monthly financial statements from the colleges and universities and shall have authority to audit the books and records of such institutions.

Another bill recommended by the Committee provides that presidents of state institutions of higher learning must obtain written approval

from the Governor and the Board of Higher Education prior to out-of-state travel, and that all other employees of those same institutions may travel out of state upon prior approval from their supervisor and the president of the institution. Under the present law, all employees of the Executive Branch of State Government, including those employed by the colleges and universities, must receive approval from the Governor prior to traveling out of State.

The Committee is also recommending a bill which allows investment of endowment funds by institutions under the control of the Board of Higher Education. Under the provisions of this bill, the institutions may invest endowment funds in a manner authorized by the Board. The bill also provides protection for the college and university administrators from liability in the event of financial loss when investments are made in a prudent manner.

OTHER COMMITTEE ACTIVITIES

Other projects of the Committee included reports on the formula used by the colleges and universities to develop their budget requests for the next biennium. The Committee did not recommend any changes in the formula.

The Committee also heard reports for informational purposes on revenue bond obligations of the state institutions under the control of the Board of Higher Education.

EDUCATION

The Committee on Education was assigned two study resolutions. Senate Concurrent Resolution No. 4074 directed a study of levels of support, duplication in course and degree offerings, cooperation, fiscal practices, uniform accounting practices, uniform academic terms, and space utilization in the field of higher education. House Concurrent Resolution No. 3090 directed a Legislative Council study of teacher certification procedures. In addition to the studies directed by resolution, the Committee was directed by the Chairman of the Legislative Council to conduct a comprehensive study of educational finance in North Dakota, both at the elementary and secondary levels, and to work with the interim Committee on Finance and Taxation in this matter.

The members of the Committee on Education were Senators Robert M. Nasset, Chairman, Philip Berube, and Donald C. Holand; and Representatives Herbert Anderson, Dean Hildebrand, Irven Jacobson, Kenneth Knudson, Gordon Larson, Donald Moore, Robert W. Peterson, Claire A. Sandness, and Earl Stoltenow. During the course of the biennium, the Committee on Education held a total of nine meetings and hearings, including one joint meeting with the interim Committee on Finance and Taxation.

The report of the Committee on Education was submitted to the Legislative Council at the biennial meeting of the Council held at Camp Grafton. The report and recommended legislation were adopted for submission to the Forty-third Legislative Assembly by the Legislative Council in November 1972.

EDUCATIONAL FINANCE

Introduction

Although no study resolution had been assigned to the Committee on Education concerning the financing of primary and secondary education in North Dakota, it became apparent very early in the biennium that many school districts of this State were approaching a financial crisis. Voters were turning down mill levies throughout the State, indicating that the property owners were determined to halt the increased costs of education from being passed on to them in the form of higher property taxes. In order to meet this impending crisis, the Chairman of the Committee on Education, in accordance with Legislative Council rules, obtained permission from the Chairman of the Legislative Council to study this problem with the objective of attempting to find some solutions.

The Committee on Education assumed this task because of the problems which existed in North Dakota, and not because of any external forces. However, shortly after this study had begun, an entirely new element focused even greater attention on the problem. On August 30, 1971, a landmark opinion on school finance was handed down by the California Supreme Court in the case of **Serrano v. Priest.** The California Court held that the level of spending for a child's publicly financed elementary or secondary education should not depend upon the wealth of the child's school district or family. The Court found that as a direct result of the property tax system, the residents of a poor district often pay taxes at a higher tax rate than residents of more wealthy districts to obtain the same or less education for their children. Such inequities were deemed in violation of the equal protection clause of the Fourteenth Amendment of the Constitution of the United States.

Other courts quickly followed the lead of the California Supreme Court. On October 12, 1971, the U. S. District Court in Minnesota adopted the findings of the **Serrano** case as being applicable in Minnesota in the case of **Van Dusartz v. Hatfield.** On December 23, 1971, the Western United States District Court of Texas, in the case of **Rodriguez v. San Antonio Independent School District,** found that the current system of financing public education in Texas discriminates on the basis of wealth by permitting citizens of affluent districts to provide a higher quality of education for their children, while paying lower taxes. The **Rodriguez** case was argued before the United States Supreme Court in October, and a decision is expected on this appeal within the next few months.

Until the United States Supreme Court has spoken on this matter, it should be emphasized that none of the lower court decisions represents the law of the land (although state Supreme Court decisions are the law within that state). On the other hand, the proliferation of litigation in this area reflects the nationwide crisis in school finance, and the fact that several courts have now found school finance systems similar to the one in North Dakota unconstitutional should be of concern to all of the residents of this State. In addition to making an evaluation of the courts' findings in these cases, it is equally important that we understand what the courts have not said. For example, the courts have not held that the property tax, per se,

is unconstitutional or an improper tax source, or that the same amount of money must be spent on each child for education. In addition, the courts have not yet spelled out any specific method or plan for school financing to remove constitutional inequities, but it appears that they will permit the legislatures to devise appropriate new systems which are not in violation of the Equal Protection Clause.

Structure of School Finance

The Committee on Education called upon the finance officer of the State Department of Public Instruction to provide services as a consultant on this study. The Committee began with a review of the present Foundation Program in North Dakota. During the current biennium, approximately $54 million was appropriated by the State for the Foundation Program. For the current school year, the statutory level of support at which this program is calculated, or the base payment, is $260 per student. After applying weighting factors which are intended to more closely reimburse a school district for the actual average costs of education for various types of schools, the amount which is raised by the 21-mill levy in each county is deducted from the payment. The weighting factor used for high school students is 1.32, and the weighting factors used for elementary schools range from .9 for elementary schools with 100 or more pupils to 1.25 for one-room rural schools. The 21-mill levy raises approximately $12,800,000 per year for the entire State. In addition to the Foundation Program, the State is reimbursing school districts under the personal property tax replacement formula approximately $12,600,000 per year. The State is also reimbursing school districts which operate school buses 16 cents per mile for buses having a capacity of 20 or more pupils and seven cents per mile for buses having a capacity of 19 or less pupils.

Total expenditures of school districts in North Dakota during the 1970-71 school term, excluding the costs of transportation, capital outlay, and debt service, were approximately $93 million. If transportation costs of $7 million are added to that figure, the total is approximately $100 million per year. There were about 145,000 students in average daily membership, and the average cost per pupil was $637.15. For the purpose of determining the amount of state aid, the Committee concerned itself with 90 percent of that amount, inasmuch as federal funds constitute about 10 percent of such costs on a statewide average. This leaves a balance of $573.43 to be provided by state and local funds.

From the outset, one of the goals of the Committee was to find a means to provide more equality of educational opportunity in North Dakota. As noted previously, present statutes provide for the use of different weighting factors for different sizes of elementary schools to account for the different costs per pupil of maintaining a quality level of education. However, the same weighting factor has been used for all high schools in the State, regardless of the size or actual costs per pupil in these schools. The Committee found, for example, that average actual per-pupil costs in high schools ranged from a low of $744.91 in those high schools with 600 or more students to a high of $1,230.26 for high schools with 24 or less students.

At the time the present Foundation Program was enacted in 1959, the Legislative Assembly determined that the State should provide 60 percent of the statewide cost of education for every student. Despite substantial increases in state appropriations since that time, these increases have not kept up with the increased costs of the school districts, and by the 1970-71 school year, the State was providing only 43 percent of the total costs. Since the California and Texas court decisions related to school finance were announced, judgments have been made in national studies that states must provide 90 percent of the costs of education, or, in the alternative, states must provide 60 percent if the remainder is equalized. In addition to examining the costs of educating students in North Dakota, the Committee reviewed the property tax base behind each pupil and discovered that, while the average tax base behind each pupil is about $4,000, the tax bases range from a low of $103 in a school district in Rolette County to a high of over $37,000 in a school district in Traill County. From these findings, the Committee concluded during the course of its study that, if the State were to match the goal of state support which was established in 1959 and the recent court decisions, it would require a dramatic increase in the Foundation Program appropriation and a change in the portion of school costs to be met by local districts.

Recommendations

The Committee recommends a bill which calls for an additional $25 million per year in state appropriations for the Foundation Program. In addition, the Committee recommends that that portion of the personal property tax replacement payment which is now going to school districts, which amounts to about $12,600,000 per year for the entire State, be added to the Foundation Program and distributed to the school districts on the basis of student enrollments rather than on the basis of the

personal property payback formula. These changes will make it possible to greatly increase the state contribution to local schools and to provide a substantial reduction in property taxes. When these figures are added to the current appropriation of about $27 million per year for the Foundation Program, plus the $12,800,000 which is realized from the 21-mill levy, the amount available will total $77,400,000 per year. The amount to be appropriated by the State, which does not include the revenue raised at the county level by the 21-mill levy, totals $64,600,000 per year, or $129,200,000 for the biennium.

The base payment per pupil, which is the amount used in determining the amount each district will receive after the various weighting factors have been applied would be increased from the current $260 to $540. As noted previously, the weighting factors for all high schools is presently 1.32. In order to more accurately reimburse school districts for the actual costs of educating students, the Committee recommends that the weighting factors for high school districts be changed to provide a weighting factor of 1.17 for high schools with 550 or more students, a weighting factor of 1.35 for high schools with from 100 to 549 students, a weighting factor of 1.45 for high schools with from 50 to 99 students, and a weighting factor of 1.80 for high schools with fewer than 50 students. The members of the Committee indicated that it was their intention to reimburse all high schools in a manner to more accurately reflect actual costs in order to provide equality of education. It should be noted that no change is recommended in the law requiring that the minimum curriculum and other standards must be met. However, the additional funding which is provided will make it possible for most of the high schools in the State to meet these minimum requirements. The bill provides that every high school district shall receive at least as much in total payments as it would have received if it had the highest number of pupils in the next lower category in order to avoid the situation in which a district might receive more money if it had fewer students.

The Committee also recommends a change in the weighting factors for one-room rural schools. The law now provides for a weighting factor of 1.25 for such schools, but the actual costs of these schools average 1.325 times the average cost per pupil statewide. The Committee recommends a weighting factor of 1.5 for one-room rural schools.

Applying these weighting factors to the proposed base of $540 will result in the following schedule of payments:

PROPOSED PAYMENTS
BASE $540
High School

	Ratio	Proposed Weighting	Proposed Payment
18,174.31 ADM (550 and up) Expenditure $13,538,218.06 $744.91 per-pupil cost	1.169	1.17	$631.80
19,606.80 ADM (100 to 549) Expenditure $16,353,974.59 $834.10 per-pupil cost	1.309	1.35	729.00
6,200.64 ADM (50 to 99) ...... Expenditure $5,811,647.31 $937.27 per-pupil cost	1.471	1.45	783.00
2,091.56 ADM (1 to 49) .... Expenditure $2,442,510.82 $1,167.79 per-pupil cost	1,833	1.80	972.00

Elementary

	Ratio	Proposed Weighting	Proposed Payment
One Teacher	1.325	1.50	$810.00
Elementary less than 100	1.106	1.00	540.00
Elementary 100 plus	.887	.90	486.00

The bill also provides for a reduction in the amount of payment due any school district for per-pupil aid of an amount equal to the product of 15 mills times the latest available net assessed and equalized valuation of property in the school district. The purpose of this provision is to equalize 15 mills of the property taxes of school districts. It should be emphasized that, unlike the 21-mill levy, this equalization factor of 15 mills would not be a mandatory levy. Thus, if a school district did not find it necessary to levy 15 mills, it would not be required to do so. However, prior to making the state per-pupil payment, the amount which would be raised by 15 mills in that district would be subtracted from the state payment. As a practical matter, very few school districts in the State are not levying at least 15 mills. The bill makes no change in the 21-mill levy for the county equalization fund.

The Committee recommends that the payment due any school district also be reduced by that amount in dollars of the state group rate for Title I of Public Law 81-874, represented by the 21-mill county equalization levy in the determination of the state group rate, multiplied times the number of students for whom the district received Public Law 81-874 payments. The intent of the Commit-

tee is to eliminate the duplication of payments caused by the fact that the 21-mill levy is used both in determining the state group rate for the payment from the Federal Government and in determining benefits due under the Foundation Program. The state group rate is the formula which has been approved for North Dakota which takes school districts comparable to the one receiving federal payments and uses school revenues raised from local sources in such districts to determine the federal contribution for students of parents who are in the district because of a federal project. The 21-mill levy is counted as a local source in this formula, and the portion of the state group rate represented by the 21-mill levy is then translated into dollars. The amount would then be multiplied times the number of students for whom the district receives impact payments, and it is that amount which would be substracted from the state payment to the district. This concept is difficult to comprehend and impossible to clearly articulate in a few sentences, but the important factor to be considered is that the Committee intends to eliminate the situation in which some districts have in the past received a duplication of benefits from the 21-mill levy. The total amount of revenue involved is just over $1 million for the entire State. It should be emphasized that there is some question as to whether the Federal Government will permit this reduction for amounts received pursuant to this program, and the Department of Public Instruction has requested a formal opinion from the United States Department of Education on this question. A decision is expected by the end of this year.

The bill provides for an increase in transportation payments from 16 cents per mile to 24 cents per mile for school buses with a capacity of 20 or more students and an increase from 7 cents to 10 cents per mile for smaller school buses.

From the outset of this study, one of the principal objectives of the Committee was to provide property tax relief. The bill recommended by the Committee provides for mandatory reductions in certain mill levies. For example, the maximum levy for many high school districts would be reduced from 34 mills to 20 mills. However, because most school districts are operating with excess levies, the actual reduction would be considerably greater than the 14 mills indicated. For example, a school district which is operating with a 50 percent increase would be reduced by a total of 21 mills, as the maximum levy would be 20 mills plus 50 percent, or a total of 30 mills, as compared to the present 51 mills. Using the same formula, high school districts operating on a 25 percent increase would have a mill levy reduction of 17.5 mills and high school districts operating on a 75 percent increase would have a mill levy reduction of 24.5 mills.

The Committee also recommends that special levies for special assessments, recreation funds, Social Security, library funds, communication funds, and teachers' retirement be eliminated. The effect of abolishing the authority to make these levies will be that school boards will have to finance these expenditures out of their general funds in the future. These special levies average 6.1 mills throughout the State.

The estimated average mill levy reduction throughout the State would be 21 mills for general fund levies and 6 mills for special mill levies, for a total of 27 mills. The Committee recommends no change in the statute which permits the voters in districts with over 4,000 population to approve unlimited mill levies, and therefore the property tax reductions in such districts, while no doubt substantial, will be the responsibility of the local school boards.

As stated previously in this report, in 1959 the Legislative Assembly established a goal of providing 60 percent of the costs of education in North Dakota. By adding the amount the Committee recommends as the appropriation for the Foundation Program and the amount raised by the 21-mill levy, which total $77,400,000 per year, and subtracting the amount of these funds which represent the amount to be paid for transportation, or $5,940,000, it can be determined that this program will provide a total of $71,460,000 for per-pupil payments. Dividing this total by the number of students in average daily membership, or 144,235, will reveal that the State will be providing $495.44 of the total cost of educating each pupil in North Dakota. This figure represents 77.7 percent of the average cost per pupil of $637.15. In addition to these amounts, the proposal calls for the equalization of 15 mills of local school district mill levies. From these facts, it can be determined that this proposal goes a long way toward meeting the constitutional tests of equality of educational opportunity. However, one final factor should be kept in mind. All of the amounts used in this determination have been based upon 1971 prices. The first school year of the next biennium will be 1973-74. Whatever additional costs, for whatever reason, which are incurred by the school districts of this State will have the effect of lowering the percentage of the costs of education borne by the State. Therefore, the Committee determined that the proposal they are recommending will probably result in the State assuming something between 65 and 70 percent of

the total costs of elementary and secondary education in North Dakota.

Conclusion

The Committee had the benefit of computer printouts prepared by the Department of Public Instruction which provided invaluable information concerning the impact of this proposal on the various school districts throughout the State. The Committee believes that the bill it is recommending will provide a more equitable distribution of the educational dollar, as well as providing property tax relief. In addition, because it calls for a substantial increase in appropriations for the Foundation Program, this proposal provides a unique opportunity to provide greater equalization of educational opportunity while, at the same time, placing virtually no school districts in the position of losing ground as compared to their present position.

TEACHER CERTIFICATION

House Concurrent Resolution No. 3090 directed the Legislative Council to study teachers' certification procedures. The resolution pointed out that there are several methods and means by which teacher certification can be carried out, either through existing procedures used by the Department of Public Instruction, or by transferring teacher certification to some other board or agency, such as the Teachers' Professional Practices Commission, or even perhaps by creating a new agency, department, or board composed of teachers, administrators, and laymen.

Under present law, the Superintendent of Public Instruction issues teachers' certificates automatically to graduates of colleges and universities in North Dakota who have graduated with a diploma in education. In addition, certificates are issued to graduates of other colleges and universities who hold a bachelor's degree, who have completed at least 16 semester hours of professional preparation for teaching, and who submit proof of graduation and such other data as may be required. Such certificates are valid for three years after the date of issuance, and the holder of a first-grade professional certificate is entitled to a first-grade certificate for life upon the completion of 18 months of successful teaching experience. The Superintendent of Public Instruction obtains three references from applicants for teacher certificates, but because the applicant selects the persons who are to write the references, such references are always favorable to the applicant.

In addition to issuing first-grade professional certificates prior to July 1, 1969, the Superintendent of Public Instruction issued second-grade professional certificates to college graduates who did not hold degrees in education and to persons who had followed a teacher preparation course but had attended college for only two years. The holder of a second-grade professional certificate was entitled to a second-grade certificate valid for life upon the completion of 18 months of successful teaching experience in North Dakota. In addition to the first and second-grade professional certificates, the Superintendent has authority to issue special certificates, to applicants who possess qualifications equivalent to those required for a second-grade professional certificate in the fields of agriculture, commercial subjects, domestic science, and manual and industrial training. Special certificates are valid for such terms as the Superintendent prescribes.

During the 1971 Legislative Session, House Bill No. 1546, which would have repealed the present law on teachers' certification and placed the responsibility for teacher certification in the Teachers' Professional Practices Commission, was introduced. The Teachers' Professional Practices Commission is a statutory board consisting of nine members appointed by the Governor from a list of nominees submitted by the North Dakota Education Association. The Teachers' Professional Practices Commission has the responsibility of developing professional codes or standards relating to ethics, conduct, and professional performance in practices of persons engaged in the profession of teaching in the public schools. In addition, the Commission is responsible for investigating complaints against members of the teaching profession relating to violations of regulations promulgated by the Commission and other complaints relating to the personal or professional conduct or performance of teachers. House Bill No. 1546 was withdrawn in favor of the study called for in House Concurrent Resolution No. 3090.

The Committee held a total of eight hearings on the subject of teachers' certification. In addition, meetings were held between members of the Committee and representatives of the Department of Public Instruction, the Board of Higher Education, the North Dakota Education Association, the North Dakota School Boards Association, the North Dakota Association of School Administrators, and the State Board of Vocational Education. The primary reason for urging a change in the present certification procedures was the belief that teachers should have a voice in determining entry into, retention in, and exit from their profession. It was noted that every other profession has such a voice concerning its membership, although notice was taken of the fact that the

teaching profession is different from other professions in that it is within the realm of public service. Throughout the discussions on this subject, concern was expressed for protecting the interests of the consumers, meaning the students, the parents, and the public at large. Therefore, from an early point in the discussion on this subject, the Committee concluded that it would not be desirable to turn the matter of teachers' certification over to a private or professional organization.

Testimony at the hearings indicated that it was generally agreed that improvements could be made in teachers' certification which would have the result of improving teaching standards and thereby the quality of education in North Dakota. Witnesses to the hearings stated that there is a need for better coordination and communication between the teacher preparation colleges, teachers in the profession, and the public. In addition, there is a need for more uniformity among all of the colleges, public and private, which prepare teachers. It was observed that rigid standards in such areas as continuing education for teachers may not result in proper credit being given for such valuable experiences as a teacher traveling abroad, for example, and therefore it was concluded that there is a need for more flexibility in the evaluations made of the teaching profession.

The Committee recommends a bill which changes the membership on the Teachers' Professional Practices Commission and provides that that organization advise the Superintendent of Public Instruction regarding teacher certification. Because the Superintendent of Public Instruction is an elected official and accountable to the public, the proposal places full responsibility in his office for determining the criteria for teachers' certification for school terms beginning on or after July 1, 1974. The Superintendent would be required to consult with the Teachers' Professional Practices Commission and would be required to hold a public hearing prior to issuing rules and regulations concerning the issuance of teachers' certificates. The bill provides that the criteria upon which teachers' certificates shall be based would include considerations of character, adequate educational preparation, and general fitness to teach in the public schools of this State. The bill repeals the statutes providing for first and second-grade professional certificates, but specifically provides that the validity of life certificates in existence on the effective date of the Act would not be affected. The bill also repeals the statute related to special certificates, but it should be emphasized that there would be sufficient flexibility in the Superintendent of Public Instruction's authority so that, if he should determine a need for special certificates, he would have the authority to issue them. The bill also specifically excludes vocational education teachers inasmuch as the certification of vocational teachers is the responsibility of the State Board of Vocational Education.

As stated previously in this report, the Committee did not believe that it would be proper to place the responsibility for teachers' certification in a private organization. Therefore, the responsibility for determining the criteria for teachers' certification would rest in the office of the Superintendent of Public Instruction. In addition, the Committee determined that, in order to provide a broad base for providing advice to the Superintendent, it would be desirable to have representatives of a variety of organizations on the Teachers' Professional Practices Commission. Therefore, instead of all nine members being appointed from nominees of the North Dakota Education Association, the Committee recommends that the Governor appoint five members from a list of nominees submitted by that organization, two members from a list submitted by the North Dakota School Boards Association, and two members from a list submitted by the North Dakota Association of School Administrators. The members of the present Commission will be considered to have resigned upon the effective date of this proposal in order that the Governor might make new appointments consistent with these changes.

The bill recommended by the Committee provides that the Superintendent of Public Instruction or his designee shall serve as secretary to the Teachers' Professional Practices Commission. The Commission would have the responsibility of advising the Superintendent of Public Instruction regarding rules, regulations, and procedures to be followed related to the issuance of teachers' certificates. The bill also amends the present law concerning the duties of the Commission to provide that the Commission shall solicit the assistance of teacher education professors and school board members, in addition to members of the teaching profession and representatives of school administrators, in the development of professional codes and standards. The bill would also amend the present law to provide that members of the Commission would receive $25 for each day actually engaged in the service of the Commission and would be paid actual and necessary traveling and other expenses at the same rate as for employees of the State. The Superintendent of Public Instruction would approve proper vouchers for such expenses. The statute on fees currently provides for a fee of $5.00 from each applicant for a first-grade professional certificate and a fee of $3.00 from each applicant for a second-grade

professional certificate or for a special certificate. The bill recommended by the Committee provides for a fee of $5 for each certificate issued by the State, and there is a provision that no certificate would be issued for a period of less than one school year. At the present time, no fees are being collected for those certificates issued automatically to graduates of North Dakota colleges. In the future, the $5 fee will be collected for each certificate issued. The bill contains an appropriation of $20,000 for the biennium for the expenses of the Commission, and it is anticipated that the fees collected will be more than sufficient to match this appropriation.

The bill recommended by the Committee would amend Section 15-41-25 of the North Dakota Century Code to provide that the accreditation of a school district would not be affected by the fact that a teacher who has been granted a certificate issued by the State Board of Vocational Education is employed in that district. It was pointed out that at the present time the law requires that every teacher in a high school must have a major or minor in the course areas or fields in which he is teaching if such high school is to receive accreditation by the Department of Public Instruction. It was noted that many vocational education teachers are not college graduates, and do not have a major or minor in the fields in which they are teaching. This change is recommended to remedy this situation.

HIGHER EDUCATION

During the 1969-1971 interim, the Committee on Education conducted a comprehensive study of duplication in course and degree offerings, academic libraries, graduate programs, teaching loads and hours, and space utilization at the colleges and universities of the State of North Dakota. Senate Concurrent Resolution No. 4074 directed the Legislative Council to continue this study. The portions of Senate Concurrent Resolution No. 4074 having to do with fiscal practices and statutes related to the institutions of higher education were assigned to the interim Committee on Budget, and the Committee on Education was assigned those portions of the resolution having to do with levels of support, duplication in course and degree offerings, cooperation, uniform academic terms, and space utilization.

The Committee invited the Commissioner of Higher Education and members of his staff to make presentations on these matters. Their testimony indicated that the problem of the duplication of courses is found particularly at the graduate level. The Board of Higher Education has established a policy of requiring individual new courses to first be approved by a curriculum committee, then they must be approved by the Dean of the college and the Vice President of the institution, then the new course must be approved by the curriculum committee of the Board of Higher Education, and finally, it must be approved by the full Board. In addition, each new graduate course must be presented to an inter-institutional graduate committee.

One concept which received the attention of the Committee is that of interstate cooperation in the field of higher education. By this means, a small state like North Dakota may be able to provide programs on a cooperative basis with neighboring states which none of the individual states would be able to singularly provide. One experimental program involving interstate cooperation is the Tri-College University concept. North Dakota State University, Moorhead State College, and Concordia College have been cooperating in a unique program since 1967. No appropriated money is going into the program, as the funds for the Tri-College University come from federal funds and private grants. The Tri-College has permitted flexibility for students enrolled at each of the three institutions to attend classes offered on other campuses on a limited basis. Tuition is paid by each student to his home institution, and each student is limited to one three-hour course on another campus per semester. The Tri-College University is now coordinating programs in modern foreign languages, philosophy, mathematics, joint library services, joint job placement, a fine arts program, and a paramedical program.

The Committee also examined the possibility of placing all of the institutions of higher education on uniform academic terms. The Board of Higher Education had studied this matter and had decided to put all institutions of higher education on the semester system beginning in the fall of 1970. The 1969 Legislative Assembly passed a resolution which called for the quarter system at all colleges and universities, except the University of North Dakota. It was noted that the various academic terms have caused problems for the Tri-College University experiment in the Fargo-Moorhead area. The semester system has been adopted by 69 percent of all institutions of higher education in the nation. Testimony indicated that the administrative costs of the quarterly system are greater than such costs for the semester system, and there is a preference among many faculty members who have studied each system for the semester system. However, on the other hand, the quarter system has advantages in that students have the opportunity to take more electives. The Committee decided to make no recommendations on this matter.

The Committee also heard a report from the

Board of Higher Education concerning a space utilization study. It was noted that the Board of Higher Education is implementing a data bank which will make it possible to determine the present usage of buildings on each campus, and will provide valuable information to assist in making decisions concerning the construction of new buildings.

The Committee used the opportunity provided by Senate Concurrent Resolution No. 4074 to open a means of communication between the legislative branch of government and the Board of Higher Education. However, because most of the matters which were considered fall within the constitutional authority of the Board of Higher Education, and as no matters requiring legislative attention were raised, the Committee makes no recommendations in this field.

FINANCE AND TAXATION

The Committee on Finance and Taxation was assigned three study resolutions. Senate Concurrent Resolution No. 4065 directed the Legislative Council to study the need for a board of tax appeals to provide taxpayers with an efficient, inexpensive procedure for the review of their grievances. Senate Concurrent Resolution No. 4083 directed the Legislative Council, with the assistance of the State Tax Department, to make a comprehensive study of the income tax laws of North Dakota. House Concurrent Resolution No. 3095 called for a study of the entire tax structure, with emphasis upon property tax assessment procedures, the 21-mill levy, the business privilege tax, and the sales tax.

Members of the Committee on Finance and Taxation are Representatives Richard J, Backes, Chairman, Eldred N. Dornacker, Ralph Dotzenrod, William Gackle, Richard A. Hentges, Karnes Johnson, LeRoy M. Larson, and Gerhart Wilkie; and Senators Francis J. Butler, Ed Doherty, Richard W. Goldberg, H. Kent Jones, Myron Just, Elton W. Ringsak, William J. Thoreson, and I. J. Wilhite. The Committee held a total of seven meetings, plus a joint meeting with the Committee on Education for a discussion of the problems related to the financing of education in this State.

The report of the Committee on Finance and Taxation was submitted to the Legislative Council at the biennial meeting of the Council held at Camp Grafton. The report and recommended legislation were adopted for submission to the Forty-third Legislative Assembly by the Legislative Council in November 1972.

STUDY OF THE NEED FOR A BOARD OF TAX APPEALS

When a property owner in North Dakota is not satisfied with the assessment made of his property, he presently has two alternative courses of action available to him. He may follow a course of action commonly referred to as the "equalization route", or he may seek an abatement of his taxes, often called the "abatement route". Under the "equalization route", the property owner appears before his city or township board at a time specified by statute, at which time such board sits as either the township board of equalization or the city board of equalization, as the case may be. The local board of equalization has the authority to make corrections in the assessments prepared by assessors. If the taxpayer is dissatisfied with the action of the city or township board of equalization, he may appeal its decision to the board of county commissioners at the time provided by law when such board is acting as the county board of equalization. If still not satisfied, the taxpayer may appeal his case to the State Board of Equalization.

The other course of action available to a dissatisfied taxpayer is the "abatement route". The taxpayer in such an action is requesting that his taxes be abated or refunded after he has paid them, whether under protest or not. The abatement action is started before the board of county commissioners, although the recommendations of the governing body of the municipality in which the property is located must be attached to the application. If the taxpayer is not satisfied with the action taken by the county board, he may either request a hearing before the State Tax Commissioner or he may appeal directly to the district court. If he asks for a hearing before the Tax Commissioner and does not receive satisfaction, he then has the right to appeal to the district court also. From the district court, he may appeal to the North Dakota Supreme Court.

As can be seen, the alternatives available to a taxpayer are complex. Although the procedures outlined above are intended to provide taxpayers with an effective alternative, the complexities of the system discourage all but a few from ever obtaining relief. In a recent year, only 10 taxpayers took their cases before the State Board of Equalization. Of these, nine were disapproved, mainly because the applicants failed to appear before their local boards prior to appealing to the State Board. Testimony before the Committee indicated that the present system works for the affluent and the well-educated, for these are the taxpayers who have the means to get relief. On the other hand, the less affluent and the less well-educated become victims of the system. Witnesses also testified that local officials sometimes fail to notify applicants for abatements of the time and place of meetings. Even with the assistance of legal counsel, one witness had been unable to get satisfaction. But perhaps the most convincing argument against the present system is that it places local government officials in the position of sitting in judgment of controversies in which they have a vested interest. In one case, a taxpayer testified that he had been informed by his county commissioners that his assessments were based on the need for revenue by the county.

The Committee reviewed the tax appeals meth-

ods in other states but found nothing which would appear practical to apply in North Dakota. Emphasis was placed upon the need for an impartial person or board to review tax assessment procedures. A suggestion was made that the small claims courts be used for this purpose. However, although this would take the matter before an impartial arbitrator, it was noted that the small claims courts are not equipped to handle technical matters such as the equalization or abatement of taxes.

Another suggestion which received the consideration of the Committee was to have the district judges appoint the members of tax appeals boards in each judicial district. It was noted that North Dakota has a constitutional provision which prohibits Supreme Court judges from exercising nonjudicial duties, and this rule has been extended to the district bench by a Supreme Court decision. Thus, if the district judges were to appoint the members of a tax appeals board, the board would have to act in the capacity of referees under the district judges. Although this alternative was explored, the Committee concluded that the increased workload it would place on the courts and the high cost of providing records for review by the district judges outweighed the advantages of this system.

The Committee concluded that there is a need for a simple, fair procedure before an impartial board for taxpayers who believe that they have a legitimate grievance concerning their property taxes. The Committee also concluded that such a procedure should be provided at a minimum of cost, both to the dissatisfied taxpayer and to the governmental units involved.

The Committee recommends a bill to create a tax appeals board to be appointed by the Governor. There would be seven members on the board who would each serve a term of seven years. In order to reduce the workload and to minimize costs, the bill provides that appeals would be taken to the tax appeals board after the board of county commissioners has taken action on an application for an abatement. By this procedure, those cases which the county commissioners are handling satisfactorily at the present time will continue to be handled by this means.

The bill provides that the notice of appeal is to be accompanied by a filing fee of $20, which fee would constitute the prepayment of costs and would be refunded in the event the board determines that the taxpayer is entitled to relief. This provision is intended to discourage nuisance actions from being brought before the board. After the filing of the notice of appeal, the taxpayer and all units of government involved would receive notice of the time and place of hearing. The hearing would be held by any three members of the tax appeals board not more than 90 days after the filing of the notice of appeal.

Although the bill does not require any special qualifications on the part of the members of the board, no member who is an elected or appointed official or employee of any county or political subdivision would be eligible to act on an appeal in which his county or any political subdivision is a party. The members of the board would select one member to be the chairman, who would have the responsibility for selecting three members of the board to sit on each case. The members would be paid $50 per day for service on the board. The bill contains an appropriation of $52,200.00 for the estimated costs of administering the tax appeals board for the coming biennium.

The Committee was also concerned about the problems resulting from failure of taxing officials to perform their duties, as the failure to send a required notice, for example, can very well deny due process to the taxpayer involved. Section 57-45-05 of the North Dakota Century Code now provides that any taxing official who refuses or neglects to perform the duties of his office shall pay to the State not less than $200 nor more than $1,000, to be determined by a court in an action brought for that purpose. This provision requires that a civil action be brought against the taxing official. In addition, Section 57-45-05 presently provides that a taxing official who unlawfully exempts property or lists property at less than its true value is subject to the same penalties. If this provision were applied literally, every taxing official in North Dakota could be found guilty of taxing property at less than its true value. In addition, property tax exemptions often involve judgment, and it does not seem fair to penalize an official for making a judgmental decision. Needless to say, Section 57-45-05 has not been effective in encouraging compliance with the statutes providing duties for taxing officials.

The Committee recommends a bill to amend Section 57-45-05 to provide that any officer or employee of a political subdivision who neglects or refuses to perform his lawful duties shall be subject to removal from office and a criminal penalty consisting of a jail sentence of not exceeding 30 days or a fine of not less than $200 nor more than $1,000. In addition, the state's attorney or any aggrieved person could proceed to obtain a writ of mandamus to compel performance by the official.

STUDY OF THE INCOME TAX

Senate Concurrent Resolution No. 4083 directed the Legislative Council to make a comprehensive study of the income tax laws of this State. The resolution specifically called for a comparison with the tax structures of other states and for an exploration of alternative methods of computing income tax liability. The Committee reviewed the tax structures of other states and reviewed the history of the present North Dakota state income tax law. Although the income tax law dates back to 1919, the present law bears little resemblance to the original. The last increase in individual income tax rates was in 1933, and the Legislature reduced the rates in 1953. In 1967, a major change was made in that the income tax law of North Dakota was "federalized"; that is, federal taxable income became the starting point for computing North Dakota taxable income. However, North Dakota retained certain special adjustments and deductions, including the deduction of federal income taxes paid and the deduction of medical expenses not allowed on the federal return.

The Committee solicited the assistance of professional tax preparation persons in the conduct of this study. The State Tax Commissioner appointed an Income Tax Advisory Committee consisting of public accountants, CPA's, attorneys, and others to work with the Committee. After periodic reports to the Committee, the Advisory Committee presented its final report at the November 1972 meeting of the Committee. The Committee accepted this report and directed that it be incorporated in the final report to the Legislative Council. The report of the Income Tax Advisory Committee is as follows:

Report of the Income Tax Advisory Committee
Introduction

The Income Tax Advisory Committee was formed in order that those who are responsible for structuring North Dakota's income tax law might gain from the experience of practicing tax specialists. The members of the Committee are not necessarily representative of a cross section of North Dakota taxpayers but were selected for their technical ability. The Committee held three meetings during which the present income tax system and several alternatives were examined.

STATEMENT OF THE PROBLEM

The North Dakota income tax law uses federal taxable income as defined by the Internal Revenue Code as of December 31, 1968, as the starting point for computing North Dakota taxable income. However, since 1969 Congress has passed at least two major tax reform bills which have substantially changed the definition of taxable income for federal purposes. Because these new definitions are not recognized under North Dakota law, many adjustments are necessary in order to arrive at taxable income for North Dakota purposes. This results in a rather lengthy and complicated individual income tax form. Unless a new approach to the definition of North Dakota taxable income is taken or the federal definitions are adopted, North Dakota's income tax forms will continue to become more lengthy and complicated until they are unworkable.

The Committee found, for example, that the length and complexity of North Dakota's present state income tax forms require taxpayers to incur the expense of acquiring professional help in filing individual returns. The complexity of the return and the discrepancy between federal definitions and North Dakota definitions of taxable income also make North Dakota's income tax law extremely difficult to administer.

PROPOSED ALTERNATIVES

A. The Committee considered the possibility of updating the present income tax law to include the federal tax reform changes as one of the alternatives to the present system.

   1. The Committee found that the use of the updated definitions of federal taxable income as a base would have the following advantages:

      a. Easy preparation of return (shorter form).

      b. Use of federally defined rules and regulations has the advantage of eliminating the expense of establishing legally acceptable definitions, rules and regulations for state purposes.

      c. Easier to administer than present system.

      d. The Committee felt that the use of updated federal taxable income would make the forms, rules and regulations more understandable to the taxpayer.

      e. Would facilitate the withholding of state income tax and would reduce cost of administration.

   2. The Committee considered the following as disadvantageous in using the federal taxable income as a base:

a. There exists an increasing tendency for the federal government to use the income tax as a fiscal economic tool. This could result in increasing the variability of income tax revenue.

b. By adopting the federal taxable income base, North Dakota would give up its right to determine what should be included in the tax base.

B. A second alternative was considered. This alternative would use the federal tax liability as a base and apply either a flat rate or a variable rate to this base.

1. The major advantages to this approach were found to be as follows:

a. Easier to administer than the present system or any other alternative.

b. Would make the forms, rules and regulations more understandable to the taxpayer and thus allow more taxpayers to prepare their own return.

c. Would facilitate the withholding of state income tax and reduce the cost of administration.

2. The disadvantages of a system which begins with the federal tax liability are:

a. As in the case of the other alternatives tied to federal definitions, the State would give up its right to determine what should be included in the tax base.

b. The federal use of the income tax as a fiscal economic policy tool might increase the variability of the North Dakota revenue from the income tax.

C. A third alternative that was examined by the Committee was the use of federal adjusted gross income less North Dakota adjustments:

1. The advantages in this approach would be:

a. The adoption of federal definitions would ease administration.

b. Would be less subject to fluctuations in revenue than other alternatives.

c. Starting with a larger base would allow the use of a lower rate structure.

2. The disadvantages might be:

a. There would still be a requirement for periodic updating of the law.

b. Could result in different filing requirements on the State and Federal levels as is the case under the present law.

c. There is some question remaining about the relationship of the "ability to pay" theory and the "gross income concept".

PRESENT NORTH DAKOTA ADJUSTMENTS

As an alternative to or as part of more extensive revisions of North Dakota's income tax law the following existing adjustments were discussed.

A. **EXCESS MEDICAL EXPENSES DEDUCTION** — This deduction has a tendency to flatten the rate structure since most of the benefits accrue to the higher income tax brackets. The Committee favored eliminating the medical deduction coupled with rate reform.

B. **SEPARATE FILING** — It was suggested that the Legislature might explore a requirement for married couples to file their state return as they filed their federal return. Again, it was felt that a rate adjustment would be necessary to offset the resulting increase in revenue. An alternative suggested was to set up a separate tax rate table for "married filing jointly".

C. **DOMESTIC DIVIDENDS EXCLUSION** — The Committee felt that this exclusion did not induce new industry to the state and that the exclusion could be eliminated coupled with rate reform.

D. **MILITARY ACTIVE DUTY PAY EXCLUSION** — There was general agreement that with the coming of a professional military that there was no concrete rationale for exempting military pay. An alternative suggested was a maximum exemption.

E. **FEDERAL INCOME TAX DEDUCTION** — The Committee was in favor of retaining this deduction.

F. **$300 JOINT FILING EXEMPTION** — This was considered to be a historical "accident" and that it should be eliminated if the new federal exemption of $750 is adopted.

G. **CIVIL SERVICE RETIREMENT PAY ($1500)** — The Committee thought that this should remain as is.

CONCLUSION

The Income Tax Advisory Committee concluded that the present North Dakota income tax law needs to be changed in order to halt the trend toward a more complicated and lengthy return. To obtain true simplification of North Dakota's income tax laws, one of three federal income tax bases would have to be used — federal tax liability, federal adjusted gross income, or federal taxable income. There was general agreement that certain adjustments under the present income tax law (domestic dividends, excess medical, etc.) could be eliminated if this were tied to general rate reform. The Committee did not think that the present rate structure was equitable, or that the present income tax law for the state was satisfactory.

Finally, it was suggested that members of the Income Tax Advisory Committee make themselves available to the Interim Finance and Taxation Committee to testify to the findings of the Committee.

After receiving the report of the Income Tax Advisory Committee, the Committee decided not to make any recommendations concerning the state income tax. It was concluded that the Committee would provide the information necessary to make a decision as to which of the alternatives should be followed and make this information available to all of the members of the Legislative Assembly. The State Tax Department is preparing a computer model which will be of assistance in determining the revenue impact of any number of alternative choices. In addition, the Committee concluded that it would be premature to make any decisions concerning rates until the entire revenue picture for the coming biennium is known.

STUDY OF THE NORTH DAKOTA TAX STRUCTURE

Introduction

The directives of House Concurrent Resolution No. 3095 were very broad. The Committee was called upon to study the entire tax structure, with emphasis upon property tax assessment procedures, the 21-mill levy, the business privilege tax, and the sales tax. The Committee determined that it would be necessary to select certain areas for concentrated study. Inasmuch as the Committee on Education was directed to study educational finance, the Committee took no action concerning the portion of the resolution calling for a study of the 21-mill levy. Other matters, such as the sales tax, had been studied during the previous interim, and therefore, other than a review of sales tax exemptions, the Committee did not concentrate its attention on that tax. Rather, the Committee concentrated on the problems related to the assessment of property and, in addition, called upon the State Tax Department for periodic reports on the business privilege tax.

Property Tax Assessments

One of the major complaints registered by taxing officials to the present statutes related to the assessment of property and the administration of the property tax is that the law does not provide sufficient time for the performance of certain duties. For example, after the assessors have delivered their assessment lists to the county auditors by the last Monday in June, the county auditors must calculate any changes made at the July meeting of the county boards of equalization, make any corrections needed, and send abstracts to the state auditor before the last day of July. In addition, the present timetable for equalization calls for the State Board of Equalization to meet in August, which is after the local taxing districts have prepared their budgets.

In order to improve these procedures, the Committee recommends a bill to change the assessment date from April first to February first and to move up the statutory meeting dates for the various boards of equalization as follows: township and city boards of equalization would meet on the second Monday in March, rather than the second Monday in June and the second Tuesday in June, respectively, as the law now provides; the county boards of equalization would meet on the first Tuesday in May, rather than the present meeting in July; and the State Board of Equalization would meet on the fourth Tuesday in June, rather than in August. County auditors would furnish assessment books to assessors in February, instead of in April, assessors would return the assessment books on the fourth Monday in March, instead of the last Monday in June, and county auditors would have until the last day in May, rather than July, to send the abstracts to the State Tax Commissioner. Assessors would have the 12-month period prior to March first, instead of June first, to perform their duties. The bill also makes a number of other changes in the statutes related to property tax assessment procedures to make them conform to the above-mentioned amendments.

The members of the Committee believe that these changes will provide for a more realistic and efficient timetable for property tax assessment procedures. Although attempts to change the assessment date have not been successful in the past, it should be noted that much of the opposi-

tion formerly was voiced because of the difficulties of making accurate assessments of livestock during the winter. Now, with the repeal of the personal property tax, this objection is no longer valid. An indication of the popularity of the proposal recommended by the Committee is that the State Assessors Association voted to recommend it with only two dissenting votes.

The Committee also recommends an amendment to Section 57-12-09 concerning the mailing of written notice of increased assessments. Several objections were voiced to the present statute, which provides that when any assessor or county board of equalization increases the assessed valuation on any tract of land by more than 15 percent, the taxpayer shall be given written notice. However, the statute provides no time limitation for the sending of such notice, nor does the statute provide for notice if the assessor, the local board of equalization, or the county board of equalization increases his assessment by 15 percent or less. Thus, if each of these were to increase an assessment by 15 percent, or a total of 45 percent, the taxpayer would not be entitled to notice under the present law. The Committee recommends a bill to provide that when any assessor or township, city, or county board of equalization, or any combination thereof, increases the net assessed valuation of real property by 15 percent and the increase amounts to $100 or more of the net assessed valuation, notice would have to be given the taxpayer. The bill provides that the notice must be sent at least 10 days in advance of the final day for authorized action by the assessor or board of equalization.

The Committee also recommends a bill to require the mailing of property tax statements by county treasurers on or before December thirty-first of each year. Although most counties are now sending such statements, a few remaining counties are not doing so. The Committee believes that all taxpayers are entitled to receive such statements. The bill also provides that such statements shall include a dollar valuation of the estimated full and true value of the property and the total mill levy applicable.

Although North Dakota law provides that property be assessed at its full and true value, as a practical matter property is assessed at a much lower rate. At the present time the statewide average is approximately 20 percent of market value. Section 57-02-28 provides that the net value used in the computation of the tax shall be 50 percent of the full and true value. Because property is assessed at about 20 percent of its full and true value, the net value, which is commonly referred to as taxable value, presently amounts to approximately 10 percent of full and true value. The Committee believes that this computation is unnecessarily complicated, and that it makes it very difficult for a taxpayer to understand his property taxes. Notice was made of the fact that bills to require 100 percent assessment of property have failed in the past, largely because it was feared that it would be much easier to increase property taxes if a one-mill increase would raise the revenue a four or five-mill increase would have raised previously. Thus, even though the statutory limitations would have been reduced accordingly, the fear has been expressed in the past that voters would be deceived into approving mill levy increases for the reason cited above. In order to bring practice and law into conformity, the Committee recommends a bill to amend Section 57-02-28 to provide that net value shall be 10 percent of full and true value. The Committee believes that this provision will have the effect of bringing assessed valuation up to full and true value without requiring any change in mill levies.

The bill makes an exception for property assessed by the State Board of Equalization, as such property is currently assessed at approximately 30 percent of full and true value. If this exception were not made, the taxable valuation of railroad and utility property would immediately be reduced from 15 percent to 10 percent. Although the State Board of Equalization has been reducing the assessments of such properties gradually, the Committee did not desire to force such dramatic a reduction at one time.

One effect of the change in the definition of taxable valuation which will result in assessed valuation being raised to full and true value is that the bonding limitations for political subdivisions would likewise be increased. Although some believe that raising the bonded indebtedness limitations would be desirable, the voters soundly defeated a proposal to do so in the primary election. Section 183 of the State Constitution provides maximum limitations, but the Legislative Assembly has the authority to establish lower limitations. Therefore, as the Committee does not wish to change the constitutional limitations, and as assessed valuation will be increased five times, the bill reduces bonded indebtedness limitations to one-fifth of their present levels.

As Section 57-02-28 was amended by the initiative process during the 1930's, this amendment will require a two-thirds vote by both Houses for passage. As real property is usually assessed only during odd-numbered years, this change would normally not be effective until the assessments in

1975. In order that assessors might make this change in the 1973 assessments, the bill contains an emergency clause.

Miscellaneous

As the Committee on Education is recommending a proposal to increase the state contribution to the Foundation Program, a joint meeting was held with that Committee. After that meeting, at which time the Committee was informed that the educational finance proposal will require an additional appropriation of $25 million per year, the Committee directed the staff to prepare two bill drafts to raise $18 million per year for education and to reduce local property taxes. Because the Committee does not believe it is possible to make any recommendations until the total revenue picture is examined for the coming biennium, and because there will be a larger balance in the general fund than had been anticipated, the Committee tabled both of these bills and directed that the Committee report reflect the fact that the bills were drafted and would be available in the event the 1973 Legislative Assembly found a need for them. One of the bills calls for a tax on adjusted gross income and the other one calls for an increase in the sales tax of one-half of one percent and a surtax on income taxes.

The Committee called on the State Tax Department for periodic reports on the business privilege tax. During the first full year of experience with this tax, approximately $4,600,000 was realized in revenue. This was less than the $5,400,000 which had been estimated, but it was noted that there had been a nonrecurring loss during the first year because of fiscal year filers. The investigations which have been conducted by the Tax Department indicate that compliance with the tax has been good. The members of the Income Tax Advisory Committee testified that, although there was some dissatisfaction with the business privilege tax, there were no insurmountable problems related to it. Therefore, the Committee makes no recommendations concerning the business privilege tax.

GOVERNMENT ADMINISTRATION

Senate Concurrent Resolution No. 4092 directs the Legislative Council to determine the duplication of services and overlapping of responsibilities between the State Department of Health and the Social Service Board of North Dakota in their offerings of service through area social service centers and mental health and retardation service units, hereinafter referred to as community mental health and retardation centers. Senate Concurrent Resolution No. 4023 directed the Legislative Council to determine the desirability and feasibility of consolidating the State Department of Health, the Department of Social Services, and other functionally related agencies. Senate Concurrent Resolution No. 4002, which was introduced by the previous interim Committee on Government Administration, directs the State Social Service Board to report to the Legislative Council on a quarterly basis the progress it has made in implementing the recommendations contained in the 1970 Touche Ross & Co. report.

The studies and responsibilities called for under the above-mentioned resolutions were assigned to the Committee on Government Administration. Members of the Committee on Government Administration are Representatives Earl Strinden, Chairman; Aloha Eagles, Brynhild Haugland, Ralph Hickle, Bruce Laughlin, Corliss Mushik, Vernon E. Wagner; and Senators Emil E. Kautzmann, Vice Chairman, C. Warner Litten, Robert Melland, Wayne G. Sanstead, Theron L. Strinden, and Frank Wenstrom. The organizational meeting of the Committee was held on June 2, 1971.

The report of the Committee on Government Administration was submitted to the Legislative Council at the biennial meeting of the Council held at Camp Grafton. The report and recommended legislation were adopted for submission to the Forty-third Legislative Assembly by the Legislative Council in November 1972.

At the organizational meeting, Committee members were presented a "background" paper explaining the functions of the agencies to be studied by the Committee and the possibilities suggested by previous Legislative Council studies for consolidating agencies providing social and health services. Touche Ross and Co. provided a ranking of departments offering greater opportunities for consolidation to lesser opportunities in its reports it presented to the Legislative Council during the 1969-71 biennium. The feasibility order under an "umbrella" Department of Social Services had vocational rehabilitation as "most feasible", then mental health, next public health, then Employment Security, and finally, corrections. Touche Ross & Co. found that, of all these departments, the Department of Social Services seemed to have the most contact and more common interest with vocational rehabilitation. Moreover, in some of the area social service centers, welfare and vocational rehabilitation shared the same offices. One of the major welfare programs, aid to the disabled, is tied very closely with rehabilitation according to the Touche Ross & Co. personnel.

The next department in the feasibility order was mental health. In this department, that Touche Ross & Co. felt, was the greatest area for profitable elimination of duplication of functions among all of the five departments that could be considered as having similar social service functions. For example, they found that social workers in area social service centers were capable of and did perform functions similar to those performed at community mental health and retardation centers. Mental health, however, does have more of a clinical or psychiatric approach to mental problems, and the range of skills brought to bear on mental problems goes beyond the skills available in area social service centers. While the extent of duplication is difficult to determine, Touche Ross & Co. pointed to an overlapping of available skills at the higher end of the spectrum in the area social service centers and at the lower end of the spectrum in the community mental health and retardation centers.

The public health function is third in the list of feasibility ranking according to Touche Ross & Co. Public health is only indirectly connected with welfare, rehabilitation, and mental health efforts; yet, in a sense, it affects them all. Thus, it is a function concerned with social services, or, as some states have called it, "human resources". The direct areas of common interest are in the licensing of institutions where the Department of Social Services has to pay the bill for welfare recipients.

The fourth department in feasibility, according to Touche Ross & Co., is Employment Security, which has some relationship with the Department of Social Services. Employment Security is involved with trying to find jobs for people on welfare or people who are receiving social services from the area social service centers or county welfare board offices. There is also a working relationship with vocational rehabilitation. It was also noted that the Nixon family assistance plan proposal would involve the Employment Security

Bureau in registering all employable recipients for work.

The last department in the list of possible state department combinations is corrections. Here, according to Touche Ross & Co., there is only a small interaction with the Department of Social Services. In the area social service centers, however, parole officers are sometimes located and such arrangements have worked out very well.

With this information serving as a basis for developing study plans for the studies called for by legislative resolutions, the Committee on Government Administration began its work. In the study of overlap and duplication in regard to area social service centers and comprehensive mental health centers, the Committee contracted with Drs. Brandt and Sheldon of Minot State College to determine the existence of overlap and duplication, and to make recommendations for Committee consideration. In regard to consolidation of social service and health-related departments on the state and local levels, the Committee asked for recommendations from the departments involved and also heard reports from the firm of Ernst & Ernst presenting elements to be considered in the determination of the benefits of consolidating state-level departments in the areas of Committee interest. In addition to these two studies, the Committee coordinated efforts between the State Department of Health and the Social Services Department in assisting the Dickinson and Williston communities in developing human service centers, contracted with Touche Ross & Co. for a review of Department of Social Services progress in implementing 1970 Touche Ross & Co. recommendations, and heard reports from the Department of Social Services on efforts it has made to implement Touche Ross & Co. recommendations approved by the Forty-second Legislative Assembly.

AREA CENTERS

At the Committee's Organizational Session, Committee members heard reports from representatives of the State Department of Social Services and the State Department of Health outlining the history and purposes of area social service centers and community mental health and retardation centers. State Department of Social Services' officials reported that the establishment of area social service centers really began in 1960 with the establishment in Bismarck, Fargo, and Grand Forks of child welfare and youth centers. This was followed with an appropriation of $120,000 from the 1961 Legislature for the purchase of psychiatric services and the establishment of a Williston demonstration project. With the passage of the 1962 amendments to the Social Security Act, the public welfare function was broadened to encompass a broader social service program. In 1962, child welfare and youth centers were established in Minot and Jamestown. In 1965, centers were established in Devils Lake and Dickinson. It was at this time that the names of the various centers were changed from child welfare and youth centers to "area social service centers". The original functions of area offices were the following:

1. To assist the county welfare boards in the development and operation of a sound program of services for children and youth in accordance with the standards and state plan under which state and federal moneys are obtained and expended. Essentially, this meant that the area offices were to provide services only to children and youth under 21 years of age, or to older persons only when the welfare of a child or youth was involved.
2. To provide consultation in all services to children and youth and social - psychological - psychiatric evaluations and consultation services to the county welfare boards.
3. To provide supervision to county child welfare workers and a training status requiring professional supervision.
4. To provide social - psychological - psychiatric evaluations and professional counseling services to other agencies and individuals, especially in counties not offering such services.

The Committee was also told that initially the work of the area offices was devoted almost exclusively to assisting the county welfare boards in the administration of financial assistance programs and services to children and youth. This program provided social - psychological - psychiatric evaluations in treating problems of children and their parents. Services were available under the following circumstances: adoption, birth out of wedlock, crippled children's services, day care, emotional disturbances and behavioral problems, foster care, homemaker services, delinquency, mental retardation, and protective services.

The Director of the Division of Mental Health and Retardation of the State Health Department reported on the activities and functions of community mental health and retardation centers which are under the general supervision of that Division. It was reported that the centers in North Dakota were the result of the passage of the 1963 Community Mental Health Center Act. There are centers located in Fargo, Jamestown, Bismarck, Minot, and Grand Forks, with legislative authority

to establish centers in Dickinson and Williston during this interim. Their services may be summarized as follows:

1. Diagnosis — Evaluation of the problem and consideration of a plan of treatment.
2. Outpatient Services — Treatment through regular visits with a therapist.
3. Inpatient Services — 24-hour treatment in a hospital setting.
4. Partial Care — Treatment on a part-time basis during the day or night.
5. Emergency Services — The emergency service enables a person to obtain psychiatric care or consultation 24 hours a day, seven days a week. A person in a crisis situation can obtain immediate help by calling the center. Suicide prevention is one aspect of the centers' emergency services.
6. Consultation and Education Services — Providing of information, training, and consultation services to the general public, and helping agencies.

Drs. Sheldon and Brandt Study

After the Committee's review of the history of community mental health and retardation centers and of area social service centers; area social service centers being under the direct administration of the State Social Service Board and community mental health and retardation centers being administered by local boards, the members of which are appointed by the county commissioners, committee members chose to contract with specialists to study the various centers to determine the extent of overlap and duplication between them and to report their findings and recommendations to the Committee. Accordingly, James E. Brandt, Ph.D., Professor of Psychology and Director of the Student Counseling Center, Minot State College, and Richard W. Sheldon, Ph.D., Associate Professor of Psychology, Minot State College, Minot, North Dakota, were selected to conduct a study of the community mental health and retardation centers and area social service centers in North Dakota. The study team, which also included Mr. Myron Dammen, Associate Professor of Psychology at Minot State College, conducted their review during the last six months of 1971 with a final report being presented to the Committee dated May 5, 1972. The report was prepared after visitations to all of the areas of the State having centers. Numerous questionnaires were completed for the study team by center personnel, community leaders, referral sources, and persons who had received services from the centers.

The conclusions contained in the report entitled "A Report to the North Dakota Legislative Council on Services Provided by the Mental Health and Retardation Centers and the Area Social Service Centers of North Dakota" are as follows:

Conclusions

"The results of this study indicate that the unique work of the Mental Health and Retardation Centers is with clients displacing character disorders and psychosis. The unique work of the Area Social Service Centers is with youth oriented problems.

An overlap does exist in their work in the areas of marital counseling and neurosis. Since marital problems can be related to all other disorders, it is inevitable that both the Mental Health and Retardation Centers and Area Social Service Centers will see people possessing marital problems. Since neurosis is probably the most prevalent emotional problem it is expected that both centers will attract people displaying these symptoms. The decision of where to place clients becomes difficult when the clients seek marital counseling and are also displaying psychotic symptoms. Marital counseling by law is the work of the Area Social Service Centers and psychotic disorders by the nature of the illness is the work of the Mental Health and Retardation Centers. In the area of neurosis the clients can probably be adequately served at either type of center.

Because of this area of ambiguity and overlap, the investigators feel the patients can be better served by combining the two agencies into a Human Resources Center. Such an agency would make referrals simpler.

Some differences existed in how the patients viewed the Area Social Services Centers and Mental Health and Retardation Centers. Although only a few differences were significant, a tendency existed for the patients at the Area Social Service Centers to feel more positive about their treatment than the patients at the Mental Health and Retardation Centers. This may be due to the greater severity of problems that are encountered at the latter centers. Vast differences in patient attitudes existed with some Mental Health and Retardation Centers reviewing the highest ratings of any agencies and some receiving the lowest ratings. It must be remembered, however, that the median ratings for all centers were in the range from neutral to very good."

Recommendations

The recommendations contained within the report are as follows:

"Recommendation I

That a common station be established for receiving clients seeking counseling at the Mental Health and Retardation Center or Area Social Service Center in those five communities in which both centers currently exist.

Rationale

The establishment of such a common intake point should accomplish the following objectives:

(a) eliminate competition for clients

(b) facilitate dissemination of information throughout the region concerning services being provided

(c) aid clients and referral sources in making decisions concerning where to obtain help.

There would be no savings in personnel as a result of this recommendation, because the intake counselors under the present conditions are also actively engaged in working with clients. However, considerable savings in human resources should be achieved through the more effective assigning of a client to one of the combined staff.

Recommendation II

That the Mental Health and Retardation Center and Area Social Service Center in these five communities merge and that the combined center be under regional control.

Rationale

A merger of these two centers should result in the establishment of a more integrated and comprehensive plan for dealing with the social and emotional needs of the area. Under the present arrangement, both centers may be contacting the same referral agency to describe the particular services they provide. Coordination of activities is occurring in some regions with individuals from the two centers going out to the schools as a team.

It is recommended that the merger take place gradually in order to maintain the good will built up by each center and to provide the personnel within each center sufficient time to adjust to the new arrangement. Also, it will take time to inform the community of the advantages of such a merger.

Regional control is recommended because the needs of each area are different, and it should stimulate both the center and community to solve their own problems. For example, some centers send their personnel to counsel in the outlying districts while others send their personnel out to the smaller cities to train others in counseling.

Estimated Savings

The primary saving in the long run as a result of this merger would be one administrative position within each community. Inasmuch as these administrators spend a considerable portion of their time in such activities as counseling and consulting, the savings would be in terms of titles rather than dollars. A successful merger depends upon a transfer of the esprit de corps within each center and the good will built up in the community, and immediate elimination of an administrative position upon merger might result in irreparable damage in terms of service to the region. Long range savings in terms of reduced administrative duties and elimination of duplication of contacts with referral agencies would probably be $75,000 per year.

Other savings will be realized when the centers are combined under a single roof, with reduced cost of utilities and better utilization of secretarial and janitorial help. Also a better library could be established with reduction of costs due to duplication. The overall savings for these items would probably be $35,000 per year.

Recommendation III

That the local board of directors draw at least 50% of its members from referral agencies. Examples of such agencies include personnel and guidance centers in colleges and high schools, county welfare boards, juvenile commissioners, police departments, vocational rehabilitation centers, hospitals and clinics, and private organizations as Family Services.

Rationale

It is felt that individuals from these referral agencies represent the most knowledgeable group of non-vested interests within the community to evaluate the effectiveness and efficiency of the

centers. They are the ones most likely to have contact with several clients, observe these clients before and after counseling, and to possess the necessary skills and experience to make judgments concerning a client's progress.

This recommendation does not mean to suggest that other members of the community are not qualified to judge the effectiveness of these centers. Moreover, a more diversified board might facilitate dissemination of information concerning the services offered by the center and help to reduce the stigma often associated with seeking counseling about emotional or social problems.

Recommendation IV

That if a merger takes place, the final decisions concerning the medical program of the center and the personnel to be employed in carrying out this program be made by a psychiatrist.

Rationale

Inasmuch as mental illness is our nation's most severe medical problem and emotional factors play a major role, if not the major role, in delinquency, alcoholism, and marital discord, the psychiatrist should be best trained to define the techniques required in the treatment and prevention of emotional and social problems.

Recommendation V

That in the event of a merger, an administrator should make the final decisions concerning the business operations of the center. He would spend much of his time in writing grants and handling public relations work in the community.

Rationale

An administrator is required to handle these affairs, so that the psychiatrist can devote his energies to the program of the center. It would be advisable if the administrator had some training in social work and/or psychology to assist the psychiatrist in selection of personnel.

Recommendation VI

That the centers make reports to referral sources concerning progress of clients referred by them.

Rationale

The effectiveness of a center is dependent upon clients. If the referral agencies believe that the center is performing competently, they will continue to send clients for counseling. This contract could also provide an opportunity for training these referral sources in detection of behavioral problems and aid in the dissemination of information about the center.

Recommendation VII

That the centers contact clients within three months following termination of counseling or failure to show up for an interview.

Rationale

As it has been found that a patient suffering from organic illness tends to recover faster when the physician expresses an interest in him as an individual, how especially important is this interest to the person seeking help for an emotional or social problem in view of the stigma often associated with these problems. Results of this study indicate that those centers who do conduct such follow-ups on the clients tend to be rated higher on the average by the referral agencies.

Recommendation VIII

That additional guidelines be established for recording information obtained during counseling sessions.

Rationale

Example of current practices which should be corrected include (a) failure to make any report for an interview, (b) notes kept in such a haphazard fashion that it is extremely difficult to follow them chronologically, (c) inclusion of subjective views of a derogatory nature, and (d) delay in transcribing material from tapes. Such irregularities would interfere with another counselor taking over in case of sickness or transfer. Results of the study indicate that clients generally have more positive attitudes toward those centers which keep better records."

For further information regarding the study conducted by Drs. Brandt and Sheldon, please refer to the completed report. Copies are available at the Legislative Council office, State Capitol, Bismarck, North Dakota.

HUMAN SERVICE CENTERS DICKINSON AND WILLISTON

At the same time that Drs. Sheldon and Brandt were conducting their study, citizens in the Williston and Dickinson regions of the State were developing plans to bring mental health services to their areas under an appropriation of $160,000 of state general fund moneys made available for two new centers by the Forty-second Legislative Assembly.

Assistance to Communities

On July 23, 1971, the Committee Chairman, in a letter to the Advisory Council members and directors of Williston and Dickinson area social service centers and community mental health and retardation center boards, explained the areas of study currently under Committee consideration which relate to the delivery of social and mental health services to the eight regions of the State. The letter stated that pursuant to directives from legislative resolutions, the Committee plans to review in depth the activities of community mental health and retardation and area social service centers to answer questions, including the following:

1. Do residents in areas served by community mental health and retardation centers and area social service centers have an opportunity to receive, and to what degree do they take advantage of, the broad range of services offered by such centers?
2. Are there some services which should be provided by centers which are not provided at this time? Are there some services provided by both units and perhaps other state agencies without an awareness of the full scope of such overlap by the centers and agencies involved?
3. What degree of coordination is there between vocational rehabilitation, extension service, parole, alcoholism officials in relation to community mental health and retardation centers and area social service centers in each community?
4. For the convenience of the client and to achieve maximum use of the limited dollars available, would a facility under joint administration offering the full range of human services to a community be the best way to deliver services?

The letter went on to state that to accomplish the objectives set forth by legislative resolution, "the Committee plans to hold a number of hearings and meetings. In addition, it has contracted with Dr. Brandt and Dr. Sheldon of the Psychology Department at Minot State College to visit the various centers and accumulate data to assist the Committee in its work. We believe the information from the study as it progresses could be of assistance in planning for the establishment of mental health services in your community". The letter also offered the Committee services to the two communities to act as a coordinator in investigating the possibility of combining the services into one unit in each community. Positive response was heard from both comprehensive mental health center and area social service center boards to the Committee's offer to encourage the State Department of Social Services and the Department of Health to develop a plan for a single unit which could be considered by each of the communities.

Assistance from State Departments

On August 31, 1971, Dr. James R. Amos, State Health Officer, and Mr. Leslie Ovre, Director of the Department of Social Services, were informed that the Committee on Government Administration had been advised by a number of community mental health and retardation center and area social service center advisory council members of their desire to cooperate in establishing human services which are coordinated and, if possible, delivered from a single unit under joint administration in the Dickinson and Williston communities. In response to this, and since the Forty-second Legislative Assembly had attached to the appropriations bills of both departments a section stating that the departments were directed to coordinate the services provided in the community mental health and retardation centers with the services provided in the area social service centers under the direction of the Social Service Board to eliminate all unnecessary duplication of program and staff, the two departments agreed to jointly prepare plans for a single unit which could be used by either or both the Dickinson and Williston communities should they decide to establish one unit in the region rather than have separate centers as has been the case in the five other regions of the State.

Meetings with Local Boards

On October 28 and 29, 1971, the Committee on Government Administration traveled to Williston and Dickinson to present to the boards, meeting jointly, a suggested plan for a single center. The report was prepared jointly by the State Departments of Health and Social Services. Representatives from the two departments accompanied the

Committee. The Committee was well received in both Williston and Dickinson with a large number of interested persons along with board members in attendance.

The purpose of the plan to combine social and mental health services is to provide better services to the people served. According to the plan, service from a combined center would broaden the scope and provide comprehensive service within one facility, thereby avoiding overlap or duplication of services, providing opportunity for greater specialization of staff, and providing better service for the money spent. One facility with combined services would make it easier for people to secure help as needed. It was recognized that other state and local agencies could eventually become a part of the combined human service center.

The plan provided that the State Department of Health and the Department of Social Services would make information available to the community mental health and retardation center board and the area social service center advisory council from each of the two areas. The plan called for combined policy-setting boards including representation from the 13-community mental health and retardation center boards and the 13-member advisory councils of the area social service centers. The social and mental health services center would include a variety of staff in order to provide a comprehensive human service program.

The two departments were initially unable to agree upon whether the center should be administered by a psychiatrist or by someone trained in administration, but it was finally agreed that the selection of the administrator would have to be made by the center. The State Health Department contended that a psychiatrist should provide overall direction for the activities of the center while the Social Service Department believes someone with administrative and executive leadership, program planning and development experience, along with public relations and program interpretation would be better able to serve as the administrator leaving responsibility for supervision of treatment programs to a psychiatrist.

The two Departments agreed that matching formulas under mental health as well as social services would be thoroughly explored to enable the communities, if they should desire to establish single centers, to maximize the benefits of federal funds along with state appropriations and local mill levies. The two Departments promised that counsel would be available from them to the two communities upon request as well as upon initiative from the two Departments when necessity demanded.

The members of both the area social service center advisory councils and community mental health and retardation center boards expressed much interest in establishing a single unit to provide human services. In Dickinson, the local boards, following initial contacts by the Committee, had already taken tentative steps in this direction and cited the following points in justifying the combining of mental health and social services:

1. Better coordination of goals and services.
2. Patient or client will know where to go to obtain service.
3. People who refer clientele to agencies will know where to make such referrals.
4. Maximum benefits with minimum costs.
5. Savings in time, travel, space, equipment, etc.
6. Easy access to service.
7. Continuity of care.
8. Flexibility in obtaining funds.
9. Greater opportunities for staff, thus better recruitment.

Single Centers Organized

In both the Dickinson and Williston communities, the area social service center advisory councils and the community mental health and retardation center boards combined under the provisions of Chapter 54-40 of the North Dakota Century Code, relating to the joint exercise of governmental powers for the purpose of establishing single units to provide human services. In Williston, the name of the human service center is the Northwest Human Resource Center, while in Dickinson the name of the center is the Badlands Human Service Center. Chairman of the Williston Board is Mr. John Gordon and Chairman of the Dickinson Board is Mrs. Peg Ahlness. Both Mrs. Ahlness and Mr. Gordon, along with center personnel, appeared before the Committee on Government Administration in Bismarck a number of times to report their progress in establishing single centers and also reporting problems which they had encountered which they hoped the Committee could help them solve. On September 28, 1972, Mr. Lee Smutzler, Director of the Badlands Human Service Center, reported to the Committee that "the Board of Directors of the Badlands Human Service Center is pleased with the progress realized to date in pro-

viding human services. Program emphasis, he said, will be in the areas of mental health, alcoholism, drug abuse, mental retardation services and social services". Progress was also reported by Mr. Howard Isakson, Acting Director of the Northwest Human Resource Center. Both centers hope to be in full operation by January 1, 1973, except for the employment of a psychiatrist which both centers have found to be very difficult to recruit.

To assist the Dickinson and Williston communities, the Committee on Government Administration held a number of subcommittee meetings to discuss problems with board members and representatives of both the State Department of Social Services and Health, and also with federal officials representing this region from the Region 8 office in Denver.

Merit System Council

One of the problems which the local boards requested assistance from the Committee to solve related to the State Merit System Council. According to federal law, federal funds through the State Social Service Board can only go to units which are under a Merit System. Since comprehensive mental health centers do not have to be under a U. S. Civil Service Commission approved Merit System to obtain National Institute of Mental Health funds, and since comprehensive mental health centers would prefer not to be under the Merit System, progress in the establishment of these single units was temporarily delayed. The most favorable federal matching formula, 75 percent federal and 25 percent state, is available only through the State Department of Social Services.

Before taking action, a subcommittee met with U. S. Civil Service Commission representatives. The subcommittee was informed by U. S. Civil Service Commission representatives that the U. S. Civil Service Commission rules and regulations would not prevent coverage of the community mental health and retardation center personnel, and that any problems in regard to whether such persons could be covered apparently relate to state law. In addition to meeting with U. S. Civil Service Commission officials and representatives of the state departments and political subdivisions involved, the Committee asked for a report from Legislative Council staff on salary levels in area social service centers and community mental health and retardation centers. The Legislative Council staff report presented the average salaries for those employees with master's degrees and involved in consulting, counseling, and social work in the State's community mental health and retardation centers and area social service centers. A review of the report indicated that for the 44 persons included in the analysis which represented 31 percent of the total employees (142) in all centers, the average annual salary in community mental health and retardation centers for May 1972 was $13,300, and $10,900 in area social service centers. The average years of experience for those working in community mental health and retardation centers in the categories included in the report were 12 years and eight years for area social service centers. It was also reported that the highest salary opportunity for a social worker within an area social service center was $15,312 per year once the person becomes the center's administrator. The highest salary received by a social worker in a community mental health and retardation center at the present time was $17,800. The highest annual salary currently being received by a psychologist in a community mental health and retardation center was $20,000, while the highest salary received by the same professional in an area social service center was $16,600 per year.

The Committee recommends a bill to specifically authorize the North Dakota Merit System Council to provide Merit System coverage to community mental health and retardation centers, human service centers, or other combinations of community mental health and retardation centers, area social service centers, and other state agency or political subdivisions upon the request of such center or unit. The North Dakota Merit System Council has approved the position classifications and salary levels for persons employed by the Dickinson and Williston units; however, it desires specific statutory authority for the future.

The Committee has accepted the concept of single units to provide human services. To encourage the development of human service centers in other regions of the State where both area social service centers and community mental health and retardation centers are located, the Committee recommends a resolution to the Forty-third Legislative Assembly directing the State Departments of Health and Social Services to provide such guidance to the Badlands Human Service Center and the Northwest Human Resource Center to assure that such centers will not overlook or be unable to take advantage of every opportunity to establish and maintain single units providing high levels of human service. In addition, the resolution provides that the Departments of Health and Social Services take such action as may be necessary to coordinate and consolidate wherever possible the services of existing area social service centers and community mental health and retardation centers during the 1973-75 interim; that the same departments deliver a high level of staff assistance and direction to encourage progress

in this endeavor; and that such assistance include the development of programs as well as furnishing plans for the most advantageous use of available funds from federal and other sources. The resolution further provides that the Departments of Health and Social Services, and the directors and board members of the area social service centers and community mental health and retardation centers report their actions taken pursuant to the resolution on a regular basis to the Legislative Council or a Council Committee designated by it during the 1973-75 biennium.

The legal authority for the establishment of the Northwest Human Resource Center and the Badlands Human Service Center, which constitute a joint venture between a political subdivision of the State and a regional office of a state agency, is Chapter 54-40 of the North Dakota Century Code which provides for the joint exercise of governmental powers. Section 54-40-01 provides that two or more governmental units or municipal corporations having in common any portion of their territory or boundary, by agreement entered into through action of their governing bodies, may jointly or cooperatively exercise their respective separate powers. The term governmental unit as used in that section includes and means every city, county, town, park district, school district, states and United States governments and departments of each thereof, and other political subdivisions even though not specifically named or referred to herein.

To encourage the establishment of human service centers under Chapter 54-40, the Committee recommends a bill defining what is meant by a human service center and also giving such a center specific mention in Chapter 54-40. The bill draft provides that human service centers organized under Chapter 54-40 are those centers established to provide human services otherwise authorized by law by the state or any of its political subdivisions. The term "human service" means service provided to individuals or their families in need thereof to help them achieve, maintain, or support the highest level of personal independence and economic self-sufficiency, including health, education, manpower, social, vocational rehabilitation, aging, food and nutrition, and housing service.

Under the provisions of the bill, a human service center would be established by the appointment of a board of directors of not less than 11 members by the authorized representatives of the agencies or political subdivisions for whom the services will be rendered by such center and by the passage of a motion by the governing bodies of such units setting forth its purposes and programs, and the approval of rules or bylaws under which operations shall be conducted, and the approval of the agreement stating the relationships between the center and the parent agencies. The bill also provides that human service centers must expend funds in accordance with law and legislative appropriations, and shall have access to the services of the State Combined Automatic Telecommunications System, and the Department of Accounts and Purchases' computer, duplicating, accounting, purchasing, and other services rendered by such department to state agencies and institutions. The bill further provides that the State Social Service Board, the State Department of Health, and such other agencies of the State as may have responsibilities in the field of service as provided by human service centers shall provide such centers assistance to the extent that the requests for such services are reasonable and related to the programs of such departments.

For the fiscal year ended June 30, 1972, $2,228,567 in federal, state, and local funds were spent for area social service center, community mental health and retardation center, and human service center programs in the State. The costs at each of the centers are as follows:

	Area Social Service Center	**Community Mental Health and Retardation Center**	**Human Service Center**
Minot	$130,364	$ 211,016	$ ....
Devils Lake	120,205	....	....
Grand Forks	124,176	168,027	....
Fargo	89,325	260,211	....
Jamestown	86,657	352,493	....
Bismarck - Mandan	130,503	355,984	....
Williston	....	....	84,781*
Dickinson	....	....	114,825*
Total	$681,230	$1,347,731	$199,606

***The Williston and Dickinson centers were organized as human service centers prior to June 30, 1972; however, the expenditures relate almost entirely to area social service center-type activities.**

To avoid unnecessary problems should communities in other regions of the State wish to establish human service centers, the Committee on March 20, 1972, urged the State Social Service Board, the State Health Department, and the Division of Vocational Rehabilitation to insert such clauses as may be necessary in renewal of leases

for regional facilities so that such departments can comply with legislation calling for consolidation in the event such should be required by the Forty-third Legislative Assembly.

CONSOLIDATION OF AGENCIES ON THE STATE LEVEL

In response to Senate Concurrent Resolution No. 4023 calling for a review of the feasibility of consolidating the various state health and social service-related agencies, the national accounting firm of Ernst & Ernst presented to the Committee a report dated February 1972 entitled "Preliminary Study of the Feasibility of Consolidation of the Department of Health, Department of Social Service, and the Division of Vocational Rehabilitation, State of North Dakota, Bismarck, North Dakota". The Ernst & Ernst Study was undertaken as an adjunct to the project which it is conducting for the State of North Dakota to develop a pilot program planning and budget system. Mr. Steve Holstad, partner in charge of the project, informed the Committee that the critical issue in his firm's review was the nature of the coordination required between departments. He stated that where coordination can be achieved at the top overall policy planning level, the case for consolidation is less significant than when coordination must occur at the program development and delivery levels. According to the Ernst & Ernst firm, programs can be related in these four ways:

1. Functional similarity or the degree to which the purposes, goals, and intent are similar.
2. Relationship of the process, or the similarity of the work involved.
3. Similarity of the program, clientele, or target groups.
4. Geographical proximity of the program deliveries systems.

Alternatives Available

Ernst & Ernst officials referred to two alternatives included in their report for organizing the State Department of Social Services, the State Health Department, and the Division of Vocational Rehabilitation on the state level. It was their belief that consolidation of services at the local and regional levels should develop impetus for recommendations to consolidate the departments which provide such services on the state level. Ernst & Ernst outlined two alternatives for the consolidation of social and health-related departments on the state level. The first alternative includes all of the departments and existing programs under a human services board, while the second alternative includes all departments, except those programs within the Health Department which do not have a program similarity with other human service activities within either the present Health Department or the Department of Social Services or the Division of Vocational Rehabilitation. Please refer to Exhibit "A" and Exhibit "B" for further information regarding the departments and the manner in which they would be organized under the two alternatives. Ernst & Ernst personnel said the potential benefit to be derived through the consolidation of the three state departments appears to be in the area of improved program planning and coordination.

It was also pointed out that integrated planning through development and execution of major programs should foster better management and prevent unnecessary overlapping and duplication of services. The firm did not foresee measurable savings in terms of the cost of client services; however, savings were reported possible in regard to the cost of the administrative support functions. The savings in the form of administrative salaries and related expenses were estimated at $166,980 per biennium. The estimated savings should be reduced by $54,700 per biennium since Ernst & Ernst identified necessary additions to the internal audit and accounting staff of the consolidated departments. The Committee recommends the first step in consolidating similar social service-related functions on the state level by recommending a bill draft to transfer the Division of Vocational Rehabilitation from the Board of Public School Education to the State Social Service Board.

1970 TOUCHE ROSS & CO. RECOMMENDATIONS

The 1971 Legislative Assembly passed Senate Concurrent Resolution No. 4002 to direct the State Social Service Board to implement recommendations contained in the 1970 Touche Ross & Co. report on public welfare in North Dakota. To encourage the implementation of the Touche Ross & Co. recommendations, the resolution provided that the Department of Social Services on a quarterly basis report its progress in implementing the recommendations to the Legislative Council. In addition to hearing reports from the Department of Social Services, the Committee contracted with Touche Ross & Co. for a report on the status of the progress of the Department of Social Services towards implementation of the Touche Ross & Co. recommendations which were included in Senate

Concurrent Resolution No. 4002. At the March 21, 1972, meeting of the Committee, Mr. Fred Cue of Touche Ross & Co. presented his report. A copy of the report entitled "North Dakota Legislative Council Committee on Government Administration, Status Report on Progress Towards Implementation of Senate Concurrent Resolution No. 4002", is available for review in the Legislative Council office.

Mr. Cue prefaced the presentation of material contained within his firm's report by giving some updated information about public welfare in North Dakota. Since his firm began its first study in September 1969, he reported that the number of employees in state, local, and county welfare offices has increased from 517 to 697. Most of the new employees are involved in special projects and are not paid from state or local funds, he said. In the county homemaker program alone, almost 40 full-time equivalent persons have been added to the payroll. On the county level, employee increases were 124, or an increase from 362 in September 1969 to 484 as of March 1972. Mr. Cue said that a number of employees in some areas should have been reduced because the declaration system was implemented. In many instances, however, he said it appears that employees were either used for other purposes or the office proceeded at the same number with reduced work effort, he said.

Much Accomplished

Mr. Cue assured the Committee that, overall, a considerable amount has been accomplished by the Social Service Board pursuant to the 1970 recommendations of the Touche Ross & Co. report. In many ways, he said, the Committee should be pleased. In other areas, however, such as in nursing homes, medicaid, the program management system, and in the employment of a financial director and planner, more needs to be done, he said.

Nursing Homes

He also said that the 1970 report included a recommendation for the Department of Social Services to audit nursing home cost statements to verify the accuracy and fairness of the information presented, including patient statistics, cost of donated services, and allocation of costs between custodial and nursing care. The purpose of suggesting audits was twofold:

1. Good business-like practice requires that periodic audits be conducted to verify cost statements that are the basis for disbursing substantial sums of public funds.
2. A better knowledge and understanding of problems of the cost-reimbursement mechanism would be gained so that the Department could make improvements and provide instructions, cost forms, reimbursement guidelines for allowable costs, and allocation of cost between custodial and nursing care. The Touche Ross report states that while the Department has taken some limited action by revising the cost report to clarify cost classifications, the allocation question has been left unanswered. The potential for improvements based on better knowledge and understanding of cost reimbursement problems has not been realized. This lost opportunity is another illustration of the need for the position of Director of Planning and Finance to be filled.

Mr. Cue said his firm recommends that the cost reimbursement improvement be one of the first projects assigned to the person hired for this position. In regard to the program management team recommended in the 1970 report which called for a team consisting of a physician, two analysts, a part-time dental consultant, and a part-time pharmaceutical consultant to review recipient medical services received for improper utilization, to make appropriate field investigations, to work with provider advisory groups, and to develop policies and procedures to improve effectiveness and quality of medical care for welfare recipients, the Touche Ross & Co. report states that significant beginning steps have been taken by the Department to improve the overall administration and operation of the medical assistance program. However, much remains to be done in this program management area.

The Touche Ross report also brought to the Committee's attention that as of March 1972 the Social Service Board has not hired a person for the position entitled "Director of Planning and Finance". This recommendation, when accomplished, would consolidate all accounting and statistical functions and create the opportunity to strengthen the department's skills in a key area. (Such person was employed on June 15, 1972.) The report reaffirms the need for this position and advises the department to seek qualified candidates with greater urgency.

In compliance with Senate Concurrent Resolution No. 4002, the Department of Social Services presented the following report on its implementation of Touche Ross & Co. recommendations to the Committee at its September 28, 1972, meeting:

"A. The Social Service Board has implemented, in the area of the department organization, the following recommendations:

1. The staff functions of the Social Service Board have been grouped under four directions as recommended. All field or line operations have been under one director but are currently separated and reassigned as required by federal regulations. Field operations for Economic Assistance are under the Director of Economic Assistance and field operations for Social Services are under the Director of Social Services;

2. All state level social service activities concerning economic assistance are under a Director of Economic Assistance;

3. All financial, statistical, auditing, disbursing, and office services activities are under the Director of Planning and Finance. Effective June 15, 1972, Mr. Robert H. Meyers was employed to fill this position.

4. All social service functions now performed at the state level are under the Director of Social Services;

5. All personnel and staff development functions continue to be the responsibility of the Director of Personnel and Staff Development.

B. Report on the administration of the Title XIX — Medical Assistance Program:

1. Since January, 1971, an inspection team composed of a physician, two registered nurses and a social worker have been doing quality care reviews in nursing homes. The physician member of the team has been part-time since December, 1971, and his involvement is limited to reviewing and evaluating information gathered on-site by nursing and social work staff. The nursing members of the team are also used sparingly to review such things as drug claims that are in excess of $100. The physician also is involved in the review of drugs and contacts physicians concerning any possible drug abuse situations that are observed. Any unresolved problems are referred to Peer Review Committees established by district medical societies and a Medical Association Peer Review Committee at the state level is also a resource.

   The State Pharmaceutical Association has also established Peer Review Committees which deal with drug problems originating with pharmacies.

   One physician has been contacted concerning the purchase of his services on a regional basis for inspecting nursing homes. It was felt by the department and the Medical Association's Advisory Committee to the department that contracting with private physicians on a statewide basis would not be warranted unless first tested in one area of the state.

   Dental and drug advisory committees continue to be available to the department on a regular basis.

   The concept of a surveillance and utilization review system as proposed by Touche Ross and Company to effect the type of program management suggested in their report cannot be achieved with the tools that are available to the department.

   Such surveillance and utilization review can only be accomplished with sufficient electronic data processing capability. Our present capability is limited by the nature of management data available from Central Data Processing. The hiring of professional and technical statistical personnel to review such data as suggested by Touche Ross and Company would be inappropriate for reasons previously mentioned.

2. Substituting an identification card for our present system of county authorization is under consideration. Problems of implementation and control without changes in the present computer programs were pointed out in the Touche Ross report presented in March, 1972.

3. The Social Service Board implemented procedures to reimburse hospitals in accordance with federal requirements (Title XVIII formula) effective July 1, 1971.

4. Agreements were signed with Blue Cross to perform hospital audits for the Social Service Board covering Title XIX effective July 1, 1971.

5. The basic formula for reimbursing nursing homes has not been changed, although minor changes in reporting and analysis of costs have been made.

6. All nursing home statements are audited and analyzed by our own staff for completeness and uniformity of reporting and the breakdown of operating costs as related to the levels of care as well as the statistical information presented.

C. The implementation of a social service management reporting program:

The mandate from the federal government that services be separated from assistance payments is delaying the development of a social service management reporting system, but in the long view will facilitate the development of a much more efficient and effective system of reporting.

In the past, because the delivery of services and assistance payments was so interwoven at the county level, but not at the area level, it was necessary to utilize one system of reporting for the county welfare boards and one system for the area social service centers. When the separation is completed, a single uniform system of reporting for both the county welfare boards and the area social service centers will be possible. Also, because the personnel at the county level were involved in both the provision of services and assistance payments, and usually with the same clients, it was extremely difficult to determine the amounts of time and money expended in relation to services alone. When the separation process is completed, which we anticipate should be by January 1, 1973, or shortly thereafter, most of these problems will have been resolved.

Also, the federal government is in the process of developing and mandating for the states a new system of Financial and Program Planning (PFP). This system will not only give a very good picture of the social service program but will enable us to compare states because the system will be installed nationwide. It would seem to be extremely important that PFP and the State's PPBS system be integrated so as to avoid the development of duplicate systems. With the coming of the PFP system it has been necessary for us to suspend some of our own planning in relation to reporting and measuring the effectiveness of services until more information becomes available in relation to the PFP so as to avoid the development of systems that will not be in harmony with each other. We anticipate that the federal government will begin to give great attention to the installation of the PFP as soon as the separation of services from assistance payments is completed, or shortly after January 1, 1973.

D. Improved personnel management system:

1. Local personnel actions cannot be initiated by the state department but consultative assistance and suggestions are being provided to county welfare boards. Local personnel actions are currently reviewed by the state department before forwarding to the Merit System Council for their approval. These two procedures will be continued and strengthened in an effort to achieve a more uniform system of personnel management and compensation equity.
2. The Department of Social Services staff is included in a statewide classification and compensation study being conducted by the firm of Ernst and Ernst. We understand a similar study of county welfare board positions is being conducted by the University of North Dakota Bureau of Governmental Affairs. The recommendations of these two studies will assist to determine salary levels which are competitive with the private sector. Currently, with the exception of skilled administrative and professional staff, entry level personnel with high qualifications are available.
3. Each Area Social Service Center has designated a staff member to be a coordinator of staff development and has established an Advisory Committee of county personnel. This position identifies individual training needs and develops a training plan. Appropriate statewide training sessions are planned and conducted by state staff development personnel. Training is directly related to each employee's job responsibilities. Of necessity, in-service training priorities are directed toward current program changes but long-range training priorities include management training and a review of emerging social work treatment methods.
4. A management-by-objective system could not be established. However, a performance evaluation system for state employees has been developed and initiated. All supervisors rate their employees' performance at time of promotion or salary increase. This rating includes a description of their special abilities, weaknesses, expectations, and training. County welfare boards submit a service rating at the time of an employee's salary advancements. We view this performance evaluation system as an initial effort that will be modified as necessary in order to assist individuals to improve their performance and to assist management to utilize staff at their fullest capacity.

E. Efforts being made to improve the Social

Service Board's accounting and budgetary practices and procedures:

1. The most practical use of accrual accounting would be with making payments for medical care. Our present volume is 15 to 20,000 medical authorizations which are processed by Central Data Processing for payment to approximately 1,000 providers of medical services each month. Due to a lack of data processing time and programming, further progress in implementing accrual accounting cannot be anticipated.

2. Arrangements were made to handle child welfare disbursements in the same manner as administrative disbursements effective July 1, 1971. The uncertainty in connection with the Department of Accounts and Purchases prompted a postponement. As soon as Central Data Processing can accept this additional responsibility, appropriate programming will be made.

3. With the recent conversion to Central Data Processing, the accounting procedures are undergoing changes and the procedural manual has been started. A general ledger has been maintained on all appropriation, fund and operational accounts since July 1, 1968.

F. Review and define the function and duties of the Area Social Service Centers in order to eliminate duplication and confusion as to function and responsibility:

1. The Social Service Board of North Dakota completed a pilot project in three counties (Barnes, Eddy, and Grand Forks) involving a county welfare board program review. This involved a complete review of the agency's administration, programs, and activities. These reviews concluded with the evaluation of the program being presented to the county welfare board for a decision regarding the program that is to be provided by the county welfare board in relation to that which is to be provided by the area social service center. It is expected that the program review will be completed in a number of other counties during the biennium. During the biennium the area social service center staff has been meeting with county welfare boards and staff for the purpose of specifically describing the services that will be provided by the area social service center in relation to those provided by the county welfare boards.

2. Appropriate personnel in the area social service center continue to provide direction and supervision to county welfare boards in the state. The extent of the direction and supervision provided is based upon need as well as the amount of staff time available to give to this activity.

3. The Social Service Board of North Dakota, through the area social service centers, continues to coordinate their activities and programs with other related programs administered by state department or agencies. This includes Vocational Rehabilitation, Probation and Parole, State Employment Service, private agencies, et cetera."

In addition to this report which stated Department of Social Services progress in implementing Touche Ross & Co. recommendations, the Department will continue making reports pursuant to Senate Concurrent Resolution No. 4002 through the last quarter of the current biennium which ends on June 30, 1973.

STATE OFFICIALS TESTIFY

Governor Guy reviewed his plans for the regionalization of state-supported services. He traced the progress made in North Dakota in the regionalization of state services, and was of the opinion that North Dakota has a potential of doing a better job than most states in the consolidation and regionalization of state services. In his opinion, however, progress was hindered by the defeat of the proposed Constitution. The Governor said the new Constitution would have been very helpful in the consolidation of services since at the present time most progress is dependent upon voluntary cooperation among state officials, while under the new Constitution, many of the state officials would have been appointed by the Governor.

Dr. James Amos, State Health Officer, in presenting material he had prepared for Committee review and in commenting on the Ernst & Ernst report, said he believes the result of consolidation would be increased costs of administration and the lowering of public health's position in State Government. He questioned whether one discipline charged with administrative responsibility for a consolidated department could provide the necessary administrative services without the employment of additional people.

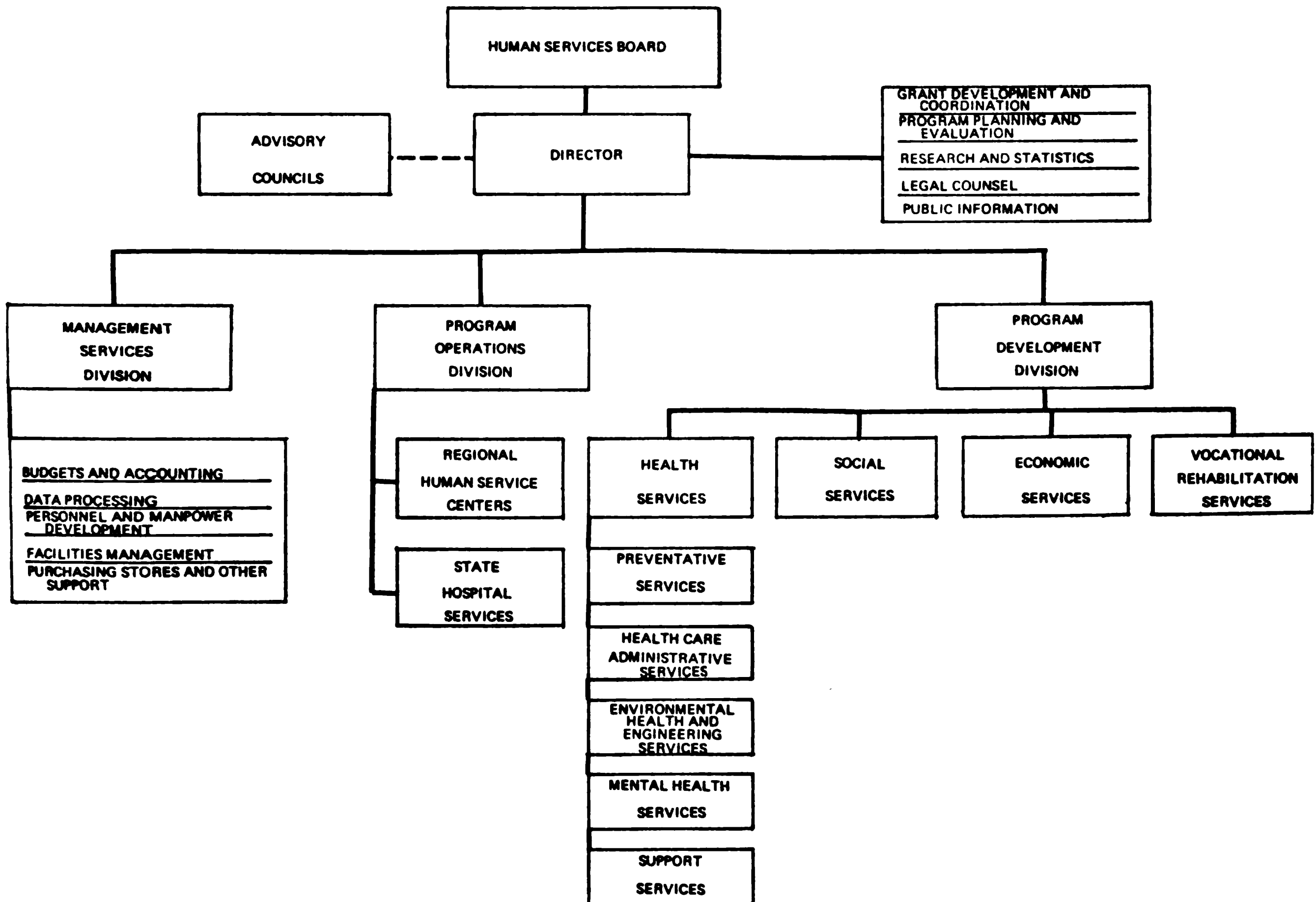
Mr. T. N. Tangedahl, speaking on behalf of the Department of Social Services, said he believes the Ernst & Ernst firm identified areas common to

the two Departments worthy of consideration. He said he does not believe that the environmental programs of the State Department of Health nor the economic assistance programs of the Department of Social Services have enough in common to be considered for the purposes of consolidation; however, in the area of Medicaid, Crippled Children's Service, and mental health and social services, there is sufficient similarity in the programs for the Departments to support some type of reorganizational changes.

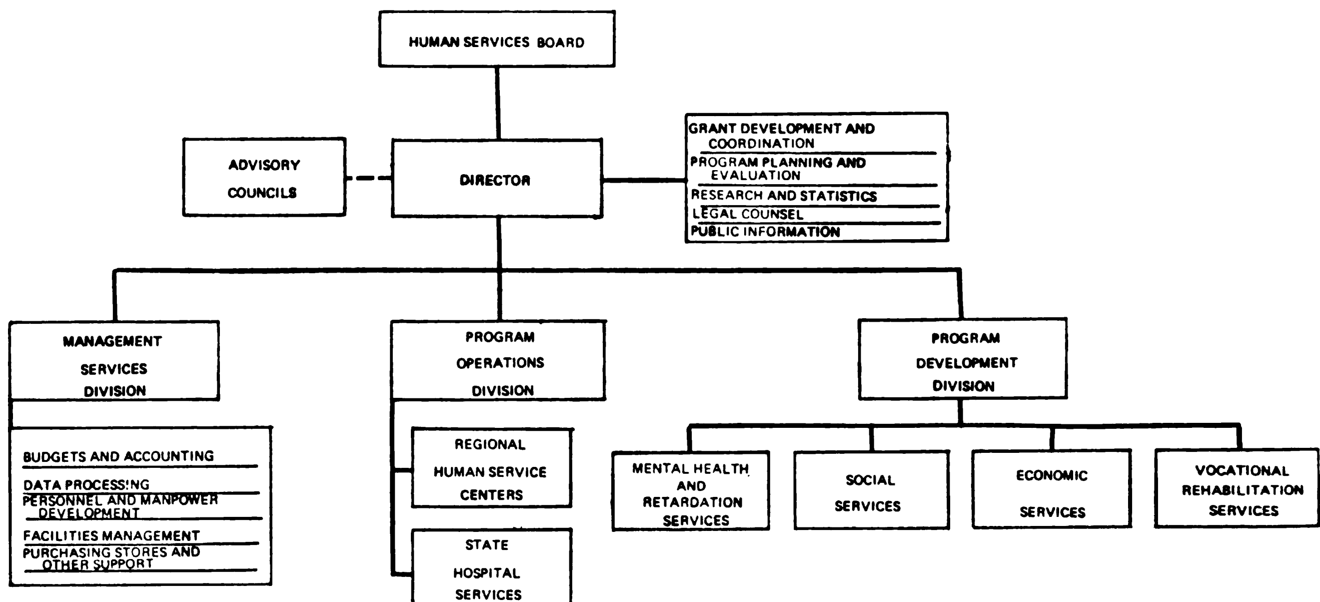
Area social service centers and community mental health and retardation centers' directors and administrators expressed their views regarding the consolidating of services on the local and regional levels of government. They expressed support to the concepts involved, but expressed hope that the Legislature would delay action on consolidating local services until the experience at Williston and Dickinson can be evaluated to determine the advantages of the consolidation in other regions.

DEPARTMENT OF HUMAN SERVICES
ALTERNATIVE A — ORGANIZATION STRUCTURE

Exhibit "A"



DEPARTMENT OF HUMAN SERVICES Exhibit "B"
ALTERNATIVE B — ORGANIZATION STRUCTURE



INDUSTRY AND BUSINESS

The Committee on Industry and Business was assigned three study resolutions. Senate Concurrent Resolution No. 4029 directed the Legislative Council to study public liability and no-fault automobile insurance. House Concurrent Resolution No. 3021 called for a study of the adequacy of various forms of agricultural finance in the Garrison Diversion Irrigation Project, and House Concurrent Resolution No. 3031 directed the Legislative Council to study the need for the continuation of the North Dakota Rural Rehabilitation Corporation.

Members of the Committee are Representatives A. G. Bunker, Chairman, Duane Brekke, John F. Gengler, Donald Giffey, Oben Gunderson, Jr., Theodore A. Lang, and Edward Metzger; and Senators Arthur Gronhovd, Gail H. Hernett, Evan E. Lips, Duane Mutch, Wayne G. Sanstead, and Russell Thane.

The report of the Committee on Industry and Business was submitted to the Legislative Council at the biennial meeting of the Council held at Camp Grafton. The report and recommended legislation were adopted for submission to the Forty-third Legislative Assembly by the Legislative Council in November 1972.

NO-FAULT AUTOMOBILE INSURANCE

Senate Concurrent Resolution No. 4029 directed the Legislative Council to study public liability and no-fault automobile insurance. During the 1971 Legislative Session, Senate Bill No. 2479 was introduced. That bill would have provided for the recovery of "net economic losses" arising from motor vehicle accidents, with certain exceptions, from each driver's own insurance company, and the tort remedy against a negligent party would have been retained. As it was believed that there was insufficient time to give that proposal adequate consideration, the Senate indefinitely postponed Senate Bill No. 2479 after the sponsor introduced the resolution calling for this study.

The Auto Accident Compensation System

The present system of compensating persons for damages suffered in automobile accidents is premised upon the theory that he who causes an accident, or the person at fault, should be responsible to those who are injured as the result of his negligence. After each automobile accident, a determination of who caused the accident must be made by insurance company investigators and adjusters. Once it is determined who is at fault, that person's insurance company must pay the "innocent victim" for their actual expenses and perhaps for their intangible losses, such as for their pain and suffering, pursuant to the liability insurance coverage of the driver who caused the accident. If there is a dispute which the parties are unable to reconcile, either as to who caused the accident or the amount of damages, the parties must settle their differences in a court of law. The person who is found to have caused the accident receives no compensation for his losses, unless he carries optional medical payment insurance, often referred to as "first-party" coverage. To further complicate this picture, North Dakota follows the "contributory negligence" rule, which means that a driver whose negligence is found to have contributed to the accident is denied recovery unless he has elected to carry first-party coverage.

Under a true no-fault system, owners of automobiles would purchase a form of insurance designed to pay losses regardless of who caused the accident. Therefore, in accidents involving two or more vehicles, the insurer of each vehicle would pay the damages suffered by the occupants of their insured's vehicle. Advocates of true no-fault insurance maintain that there would be a substantial savings in costs which are now used up by investigations, lawyers' fees, and claim negotiation and settlement expenses, because there would be no need to determine who caused each accident. There are many variations of the no-fault concept, some of which require the payment of first-party benefits but subsequently permit the subrogation of claims against the party at fault by the insurance company which had paid its insured who was not at fault.

Few subjects have received the attention the subject of no-fault automobile insurance has received during the past few years. Although there have been a number of advocates of automobile insurance reform dating back several decades, major attention has focused on this subject since 1968 when Congress directed the United States Department of Transportation to conduct a study and to report its findings and recommendations to the President and Congress. Congress appropriated $2 million for this study, and the final report was released on March 18, 1971. The DOT study concluded that the existing system ill serves the accident victim, the insuring public, and society at

large. Further, it was concluded that the present system is inefficient, grossly expensive, incomplete, and slow. It allocates benefits poorly and very unevenly, discourages the use of rehabilitative techniques, and overburdens the courts and the legal system. Based upon the DOT study, the Nixon Administration has recommended that the states adopt a first-party, no-fault compensation system for automobile accident victims.

Although Saskatchewan has had no-fault insurance since 1946, and Puerto Rico has had it since 1968, the first state to adopt a modified no-fault automobile insurance system was Massachusetts in 1970. Since Massachusetts took the initiative, Florida, Delaware, Illinois, Connecticut, Maryland, New Jersey, and Michigan have adopted modified no-fault insurance programs. Other states, including Minnesota, Oregon, New Hampshire, and South Dakota, have enacted statutes which require insurance companies to offer first-party insurance options to persons who buy liability policies. The Illinois law was declared unconstitutional by that State's Supreme Court in 1972.

During the course of its deliberations, the Committee reviewed the no-fault insurance statutes of several other states and gave careful consideration to the Uniform Motor Vehicle Accident Reparations Act, which was drafted by the National Conference of Commissioners on Uniform State Laws in cooperation with the Council of State Governments and with a financial grant from the Department of Transportation. In addition, the Committee heard testimony and received suggestions from the State Insurance Commissioner, the State Bar Association, the American Trial Lawyers Association, several insurance organizations, and the United States Department of Transportation. This report will cover but a small portion of the material and information which was digested by the members of the Committee during the course of this study.

The Auto Insurance Controversy

The Committee reviewed the report of the Department of Transportation and several other memorandums and reports from other states on the subject of automobile insurance. Much has been written about the shortcomings of the present system. Some of the arguments used in pointing out the deficiencies of the present system are outlined below:

1. The overhead of the automobile lawsuit system takes 56 percent of automobile insurance bodily injury premiums and leaves only 44 percent to actually reimburse the injured. Of this 56 percent, 33 percent goes to insurance companies and their agents for administrative purposes, and 23 percent goes to lawyers and claim investigators.
2. There is excessive delay in settling claims.
3. The rules of fault upon which the automobile lawsuit rests preclude any compensation for 25 percent to 40 percent of all traffic victims.
4. Automobile negligence lawsuits take 17 percent of our national judicial resources and add to congestion of our courts.
5. Because of the high costs of defending lawsuits, insurance companies often quickly pay smaller, but perhaps exaggerated, claims, simply to avoid the expenses of lawsuits, but will fight larger claims because of the unpredictability of lawsuit awards.
6. Fault is often difficult, if not impossible, to determine.

Some of the arguments which have been used to defend the present system, and to criticize no-fault insurance proposals, are outlined below:

1. A no-fault insurance system would destroy legal rights of innocent victims to seek redress for their injuries against negligent drivers.
2. The present system places the burden upon the party who is found to be liable for the accident, while under no-fault the injured party must bear the loss through his own insurance company.
3. Many no-fault proposals do not provide adequate compensation for intangible losses, such as for pain and suffering.
4. There might be an increase in fraudulent claims under no-fault as compared to the present system, because there would be less of a need to thoroughly investigate each accident.
5. No-fault insurance would eliminate one incentive for safe driving, inasmuch as the drivers who are at fault would no longer be held responsible for the losses they caused.
6. There is no congestion of courts in North Dakota.

Alternatives for Reform

The Committee invited representatives of the organized Bar and the insurance industry to par-

ticipate in its deliberations from the outset of this study. Particular attention was paid to the fact that North Dakota is a rural state and that many of the reasons given for the promotion of no-fault automobile insurance in urban, densely populated states simply do not apply here. For example, court congestion and delay are not problems in North Dakota. While everyone is concerned with the cost of automobile insurance, it was noted that, on a comparative basis, North Dakotans pay some of the lowest premiums in the nation. Thus, while the Committee examined the experience of such states as Massachusetts, testimony provided the Committee with conclusive evidence that the citizens of this State could not expect to receive the dramatic reductions in premium costs which have been so widely publicized in Massachusetts.

In order to identify the problems concerned with automobile insurance in North Dakota, the Committee reviewed the experience of the insurance companies which belong to the National Association of Independent Insurers (NAII), a national organization which includes as members companies which write over half of the automobile insurance in North Dakota. The studies conducted by the NAII indicate that small losses are paid on the average of 300 percent to 400 percent of economic losses, while this average is reduced as the size of the claims increase. In addition, the NAII experience is that a sizeable number of people who are injured in automobile accidents receive no tort recovery. Of perhaps the most interest, however, are the statistics related to the premium dollar which is returned to North Dakota residents in the form of insurance payments. The North Dakota loss ratios, which represent incurred to earned, less dividends and not including adjustment expenses, are as follows:

Automobile bodily injury	59.8%
Automobile property damage .	57.7%
Automobile physical damage ..	62.4%

It should be remembered that these figures represent the gross amounts paid by insurance companies. Therefore, plaintiffs' attorneys' fees would be paid out of the above percentages. The percentage of the insurance dollar which is paid to claimants over and above all expenditures is difficult to accurately determine, as there is often no public disclosure of these amounts.

One of the principal factors of concern to the Committee was the possibility that Congress would enact federal legislation on the subject of no-fault insurance. The Hart-Magnuson bill would have given the states a period of time in which to comply with certain federal standards. If the states failed to enact such minimum standards, the responsibility for automobile insurance would have reverted to the Federal Government. The national requirements would have included compulsory insurance, limitations on the tort remedy for persons injured in motor vehicle accidents, and certain minimum benefit coverages. The Committee members were unanimous in concluding that federal regulation of automobile insurance is not in the best interests of the people of North Dakota. Reliable estimates of the increase in rates under the Hart-Magnuson bill for residents of North Dakota are that premiums would be increased an average of 150 percent. The reason for this increase would be that the net result of a national rating system would be to penalize persons living in low density, rural areas in order to provide lower premiums for persons living in high density, urban areas. Although no action was taken by the 92nd Congress, the sponsors have indicated that they plan to introduce a similar proposal early in the next session.

The Committee reviewed several drafts which were prepared during the course of the study of the Uniform Motor Vehicle Accident Reparations Act of the National Conference of Commissioners on Uniform State Laws. With few exceptions, the witnesses who appeared before the Committee appeared in opposition to the Uniform Act. The principal objection to this proposal is that it abolishes the tort remedy in most cases. Testimony on this subject expressed the opinion that the public would not accept a system which denied recovery from drivers who are found to be negligent. For example, under the Uniform Act the only source of recovery for damage to a vehicle and its contents resulting from an accident casually involving only motor vehicles would be optionally purchased first-party collision insurance. Although insurers would be required to offer various alternative forms of first-party collision coverage, including a limited form of collision coverage based upon fault, a person who failed to purchase such insurance for his own vehicle would have no recourse in the event his parked automobile were struck by a negligent driver. A further objection expressed to the Uniform Act is that it would require compulsory insurance coverage. Compulsory insurance bills have been unsuccessful in North Dakota in the past, partly because of the difficulties and high cost of administering such a law.

The presentations made to the Committee ranged from proposals to make very substantial changes in the present tort remedies available to persons injured in automobile accidents, such as in the Uniform Act, to proposals which would make

no change in the tort remedy but would provide mandatory offerings of first-party insurance to all drivers. It was after taking these varying concepts into consideration, together with several modified proposals which fall between these two extremes, that the Committee makes its recommendations for reform of automobile compensation for North Dakota.

Recommendations

The Committee recommends a modified no-fault insurance proposal which closely follows the Dual Protection Plan, a model draft prepared by the National Association of Independent Insurers. Basically, this plan provides that all policies insuring private passenger automobiles from liability shall, as of January 1, 1974, include certain first-party benefits. These benefits include $2,000 per person for medical, hospital, surgical, dental, vocational rehabilitation, and similar expenses, disability benefits up to $750 per month with a maximum of $6,000, and a maximum of $4,500 for benefits for a person who was not an income producer for essential substitute services, such as those of a housewife. Experience in the insurance industry indicates that these benefits will adequately compensate 95 percent of the people injured in auto accidents. In addition to these mandatory limits, insurance companies would be required to offer supplemental coverage to an aggregate of not less than $100,000.

Excluded from the no-fault benefits would be a person who intentionally caused an accident, stole a vehicle in which he was injured, or was injured while committing a felony or while driving in an official race.

The Dual Protection Plan preserves the innocent victim's right to recover additional damages from a wrongdoer. In addition, because it basically retains the tort remedy, it retains personal accountability for negligent driving which has the effect of keeping the major share of the premium cost burden on those who present the greatest hazard on the highways.

No proposal which provides additional insurance coverage can do so without an increase in premium costs unless there are some cost balancing features. The Dual Protection Plan provides that hospital room and board benefits may be limited, except for intensive care facilities, to regular daily semiprivate room rates. In addition, income loss benefits would be limited to 85 percent of actual income, in order to more accurately compensate injured persons for their loss of take-home pay, as contrasted to their gross income. The Dual Protection Plan also requires arbitration procedures between insurance companies. Because Section 120 of the North Dakota Constitution prohibits binding arbitration, this provision allows an appeal to district court by either party. Thus, an injured party would be reimbursed by his own company promptly, but his insurance company would be entitled to recover from the insurer of the party at fault without having to go to court in most cases.

In order to provide further cost savings, the Dual Protection Plan would place certain limitations on the right to recover for intangible losses, such as pain and suffering, in less serious cases. The limitation on intangible losses in the Dual Protection Plan has been referred to as the "formula approach", which should be contrasted to the "threshold approach" which is included in many no-fault proposals. Under the latter theory, a person has no right to recover in tort from a wrongdoer unless he has a certain amount of medical bills. Under the "formula approach", a person would always have the right to an action in tort against a negligent party, but his recovery for pain and suffering would be limited to 50 cents on the dollar for the first $500 in medical bills and $1 for every dollar in medical bills over $500. These limitations would apply only in the less serious injury cases, or "nuisance" cases, which are the accidents in which the industry is currently overcompensating for losses, and it is intended to result in a cost savings over the present system. These limitations would not apply if the accident resulted in death, dismemberment, permanent total or significant permanent partial disability, permanent serious disfigurement, or if the jury or court determines that the pain and suffering is of such character and proportions that the limitations would be unreasonable.

With the exception of deductions for benefits recoverable under Uninsured Motorist Coverage and Workmen's Compensation, automobile insurance would be primary to other forms of medical insurance. There is a provision to avoid the duplication of benefits from more than one automobile insurance policy.

Concern was expressed because the Dual Protection Plan is quite similar to the no-fault automobile insurance plan which was declared unconstitutional by the Illinois Supreme Court. However, it should be noted that the Illinois plan placed limitations on the tort remedy of persons who were not covered by the no-fault benefits. The bill recommended by the Committee specifically provides that the tort limitations provided in the "formula" would apply only in accidents between

parties who have the first-party benefits. In addition, the bill differs from the Illinois law in that the "formula" limitations would not apply in the event the court or jury found them to be unreasonable.

Conclusion

The Committee believes that the bill it recommends will improve the efficiencies of the automobile compensation system in North Dakota. The Dual Protection Plan will result in eliminating much of the uncertainty accident victims now have concerning whether they will be compensated. Because of the statutory limitations it would place on recoveries for intangible losses in less serious cases, the Committee believes that it will be possible to provide benefits to many victims who are not now being compensated and with no increase in premiums. In addition, the Dual Protection Plan retains personal accountability for negligent driving, which will protect good drivers from losing their preferred status as concerns the rating system used by the insurance industry. The Committee believes that this modified approach to the automobile accident compensation system offered by the Dual Protection Plan is ideally suited to meeting the needs of the people of North Dakota.

STUDY OF THE ADEQUACY OF AGRICULTURAL FINANCE

House Concurrent Resolution No. 3021 directed the Legislative Council to conduct an intensive study of the adequacy of agricultural finance under the impending increase of irrigation farming in North Dakota. The resolution requested a study of the adequacy of various forms of agricultural finance that will be required during the implementation period of the individual farm unit irrigation projects and associated intensive farming in the Garrison Diversion Irrigation Project.

The Committee held six meetings on this subject during the course of this study and listened to remarks and formal presentations by economists and representatives of several different lending agencies, the United States Bureau of Reclamation, the Garrison Diversion Conservancy District (GDCD), and others. In order to become more familiar with the area of study, Committee members also toured the Carrington Irrigation Branch Station in conjunction with a Committee meeting in Carrington, which included a hearing on the adequacy of agricultural finance related to irrigation development.

Although estimates vary regarding the projected investment needs associated with irrigation development, and the ability of local credit sources to supply the funds necessary to finance such development, there is general concern that lending agencies in North Dakota may not be able to fully meet the finance needs created by development of capital-intensive irrigation farming in North Dakota.

The rationing of capital during the beginning stages of irrigation may mean the difference between success and failure. Individuals appearing before the Committee commented that the success or failure of irrigation is quite closely correlated to the capital available the first few years in converting from dryland to irrigation farming, and suggested the greatest need is for an intermediate type of credit to permit a farmer to borrow enough capital to finance additional machinery and livestock purchases, with repayment delayed until increased returns are realized from irrigation production.

Personnel of the Department of Agricultural Economics at North Dakota State University and representatives of several lending agencies commented that in the near future many young farmers with little equity or management experience will desire to irrigate, and that credit agencies will need to become familiar with the problems of irrigation finance. There will be a need to lend on the basis of management and income potential rather than chattel and land mortgages. A study conducted by the Department of Agricultural Economics indicated that 69 percent of the agricultural lenders surveyed believe there will be enough capital available to meet the demands for irrigation development, but Department personnel commented that many of the current irrigators are older, established farmers who have borrowed on the basis of dryland farming using current assets as collateral, and not on the basis of irrigation farming. Thus, it was concluded that the lenders have not had sufficient experience to project capital needs under irrigation farming. The study also indicated that only seven percent of all banks in North Dakota have made irrigation loans.

Several studies have been completed by the Department of Agricultural Economics in an attempt to determine costs and returns for irrigation farming in North Dakota, and to determine investment requirements for starting an irrigation operation. Based on these studies, the development of irrigation under Garrison Diversion will cost about $63,000,000, and an additional $15,500,000 will be required for private irrigation development by 1980. There will also be a need for additional

funds to purchase materials, livestock, and other related enterprises utilized in marketing the production from irrigation. These credit needs will be in addition to the regular increasing credit needs of dryland farming.

Personnel of the Garrison Diversion Conservancy District stated that after initial water delivery, which is projected for 1975, it is estimated that about 20,000 acres of land will be developed for irrigation farming each year in the Garrison Diversion Unit. Irrigation equipment costs are estimated at $25,000 to $30,000 per quarter of land. GDCD personnel said that individuals who will have a water supply available through Garrison Diversion will be assessed for the availability of this resource whether or not they irrigate, and should therefore have sufficient credit sources available to them to purchase irrigation equipment for their farm operations.

The Committee solicited recommendations from interested persons and organizations regarding the finance of irrigation development in North Dakota. A recommendation by members of the Agricultural Committee of the Garrison Diversion Conservancy District suggested:

1. That the Bank of North Dakota be authorized to issue bonds in the amount of $25 million in increments and terms as deemed necessary for the purpose of establishing an Irrigation Equipment Loan Fund, which would be used for the specific purpose of participating with local banks and credit institutions in irrigation equipment loans. The extent of such participation, interest rate, and other regulations as to the use of this fund would be determined by the Bank of North Dakota governing body.
2. That the resources of the Rural Rehabilitation Corporation be used as a guarantee fund for the Irrigation Equipment Loan Fund bond issue made by the Bank of North Dakota, thereby enhancing the possibility of securing a low interest rate for the bond issues by providing additional security to the bondholders.

It was noted by a spokesman for the GDCD Committee that there is no desire to circumvent private credit agencies, but instead, to provide funds where normal credit sources are inadequate.

It was also suggested that the profits of the Bank of North Dakota might be utilized as a special fund providing for irrigation development loans at a moderate rate of interest, but members of the Committee rejected this idea because it is believed the earmarking of Bank profits for a special fund would not be desirable.

Other suggestions offered for consideration by the Committee were to have the Bank of North Dakota take the leadership in assisting local financial institutions in providing loan funds; to have the Bank of North Dakota take part in overline credit as needed by the local banks for irrigation purposes; to create a loan insurance program to guarantee irrigation loans; or to set up an entirely new organization which would provide these services in cooperation with present existing financial institutions.

During a meeting with members of the Industrial Commission concerning alternatives regarding irrigation finance, the Governor noted that intensified farming practices will require large amounts of capital for the development of agriculture and businesses related to agriculture. He said farm credit suppliers may not be able to respond at a reasonable rate of interest, and suggested that the Bank of North Dakota through the Industrial Commission should be allowed to provide a larger amount of risk capital to finance development programs important to North Dakota's economy. Personnel of the Bank of North Dakota stated there is need for a means by which the Bank can go to the Legislature for approval to sell debentures or bonds for credit needs, such as irrigation development, construction of a sugar beet processing plant, or other projects that are important to the development of North Dakota's economy.

Representatives of the North Dakota Bankers Association and the Bank of North Dakota made recommendations regarding Title 6 of the North Dakota Century Code, "Banks and Banking", which would enhance agricultural finance in general.

**Recommendations —
Agricultural Finance Study**

Due to the importance of the agricultural industry, and because of the impact that development of irrigation farming will have on North Dakota's economy, the Committee recommends legislation which would provide funds for irrigation development where normal credit sources are inadequate.

The Committee recommends a bill to authorize the Industrial Commission to issue debentures through the Bank of North Dakota to provide capital for loans to enable residents of North Dakota to purchase and finance irrigation distribution sys-

tems and related agricultural facilities and enterprises. Such loans would be made on a participating basis with other banks and lending institutions. The Industrial Commission could issue debentures in amounts not to exceed a total of $10 million, which is the constitutional limitation on bonds of state-owned utilities, enterprises, and industries.

The bill provides that the debentures issued and the income from such debentures would be exempt from all taxes except inheritance, estate, and transfer taxes. Although the bill specifically provides that the debentures would be secured solely by the real and personal property of the Bank of North Dakota and would not be an obligation of the State of North Dakota, it was recognized by the members of the Committee that the bond purchasers would probably want to see a court test of this legislation before they would buy the debentures. Therefore, before these debentures would be issued, there would probably have to be a "friendly" court test of this provision.

In order to improve agricultural finance in general, the Committee recommends amendments to present law which would place state banks on the same basis as federal banks by increasing the amount which could be loaned from 80 to 90 percent and the term from a maximum of 25 to 30 years on real estate loans, and which would allow banks to lease personal property for not to exceed 10 years rather than the current five-year limitation.

The Committee also recommends amendments to Section 6-09-15 which would provide that the Bank of North Dakota must hold the first lien on real estate loans to farmers by being first in place, but would not require a "duly recorded first mortgage" (as required under present law) which has been interpreted to mean first in time as well as first in place. The proposed legislation would allow a lending agency, such as the Farmers Home Administration, to subordinate its position to the Bank of North Dakota without terminating and reissuing its loan to the borrower.

Additional amendments to Section 6-09-15 would revise present language by allowing the Bank of North Dakota to make loans to, purchase notes or debentures issued by, and participate in loans made by all federally chartered financial organizations; to make loans to, and purchase notes or debentures issued by savings and loan associations and credit unions; and to make loans on real estate security in excess of 30 percent of its capital, and 20 percent of its deposits, if such loans are insured or guaranteed by the United States, its agencies, or a private insurance company.

Personnel of the Bank of North Dakota testified that Credit Unions make many small loans not feasible for the Bank to participate in, and that recommended language allowing the Bank of North Dakota to make larger loans directly to the Credit Unions would be desirable. In answer to questions from Committee members regarding the necessity of going outside North Dakota to invest funds, Bank of North Dakota personnel referred to investments with regional banks, and said the out-of-state market also provides the Bank of North Dakota with a means to make short-term, 30 to 90-day loans.

The recommended insertion of "or other commercial paper" after "debentures" in Section 6-09-15 would alleviate the need to list each type of commercial paper in which the Bank of North Dakota may invest its funds.

Bank of North Dakota personnel said that the addition of the words "excluding those loans insured or guaranteed by the United States, its agencies, or the portion thereof that is insured by a private insurance company" relating to real estate loans in excess of 30 percent of its capital and 20 percent of its deposits, would give the Bank of North Dakota needed flexibility in the area of real estate loans.

STUDY OF THE NEED FOR CONTINUATION OF THE NORTH DAKOTA RURAL REHABILITATION CORPORATION

House Concurrent Resolution No. 3031 directed the Legislative Council to study the history and present mission of the North Dakota Rural Rehabilitation Corporation and to make such recommendations as are deemed advisable as to its role in the credit structure of North Dakota. The resolution requested the Legislative Council to examine the need for the continuation of the North Dakota Rural Rehabilitation Corporation and to make such recommendations for its continuance or dissolution as are deemed appropriate.

The North Dakota Rural Rehabilitation Corporation (RRC) was formed in 1934 as a nonprofit charitable corporation organized at the instance of the Federal Government for the purpose of facilitating the administration of a rural rehabilitation program in North Dakota through various grants made for that purpose by Congress.

The Federal Emergency Relief Administration, which made the original federal grant to the North Dakota Rural Rehabilitation Corporation, was phased out of existence on November 30, 1935. The last action by Congress in this regard was the passage of the "Rural Rehabilitation Corporation Trust Liquidation Act" (Public Law 449, 81st Congress, approved May 3, 1950) authorizing: (1) The return of the assets to each state rural rehabilitation corporation, or state agency or official designated by the state legislature, subject to certain limitations, or (2) The return of title to the assets to the corporation or state agency or official, with authority for the Secretary of Agriculture and the corporation or state agency or official to make a new agreement for the administration of the assets by the Secretary.

The North Dakota Rural Rehabilitation Corporation is a private independent corporation which is currently administered (within the limits established by Public Law 499) by a five-member citizen Board of Directors. The present assets of the RRC total approximately $3,245,000 and must be used for agricultural purposes approved by the Secretary of Agriculture. Most of the assets are in the form of 40-year insured mortgages, but a small amount is in Certificates of Deposit and U. S. Treasury Bonds.

The Committee discussed several alternatives regarding the Rural Rehabilitation Corporation, including:

1. Retain the five-member citizen board as the administrator of RRC assets under the current trust agreement;
2. Obtain the approval of the Secretary of Agriculture to transfer RRC assets to the Bank of North Dakota for administration of these assets under the current trust agreement, by the Bank's professional staff; and
3. A resolution to Congress to urge the unconditional release of RRC funds to the State of North Dakota, free of any trust agreement.

Members of the RRC's Board of Directors appeared before the Committee during the course of the study. It was noted that the Board of Directors has contracted with the Farmers Home Administration, and more recently with the Bank of North Dakota, to administer loan funds made available by the RRC.

Members of the Industrial Commission also appeared before the Committee regarding the Rural Rehabilitation Corporation. The Governor questioned whether the best possible use is being made of these funds under the present system or whether another agency or institution might make better use of these moneys. He suggested that all trust funds should be administered by a professional staff. The Commissioner of Agriculture stated that he no longer sees a need for the Rural Rehabilitation Corporation.

Several persons suggested that the assets of the Rural Rehabilitation Corporation be administered by the Bank of North Dakota under the current trust agreement, because the professional staff of the Bank, together with the supervision provided by the Industrial Commission, would seem to offer more expertise and efficiency than the present system under which Rural Rehabilitation Corporation assets are managed.

The Committee also discussed the possibility of having these funds unconditionally released to the State of North Dakota free of any trust agreement. It was noted that many of the types of loans permitted under the trust agreement are currently being made by the Bank of North Dakota, and since nearly all of these programs could fall within the broad category of "rural rehabilitation", it would seem that to turn the assets over to the State for administration by the Bank of North Dakota would be within the spirit of the original legislation. The Committee has contacted a member of North Dakota's Congressional Delegation, who has agreed to introduce legislation in the Federal Congress to unconditionally transfer to the State of North Dakota the assets of the Rural Rehabilitation Corporation, if such a transfer is desired by the Legislature.

Recommendations — Rural Rehabilitation Corporation Study

In the interests of streamlining State Government, and in an effort to consolidate and coordinate financial assistance for rural development, the Committee concluded that it would be desirable to have a state agency with professional management and staff administer these funds along with other contemporary programs of benefit to rural needs. The Committee also determined that it would be preferable to find a method of having these moneys unconditionally turned over to the State so that they might be administered free of trust provisions and restrictions. It is the intention of the Committee that these assets be used by the Bank for purposes of rural development, including irrigation finance.

The Committee recommends a concurrent resolution requesting that the Congress of the United

States unconditionally release to the State of North Dakota, free of any trust agreement, the assets of the North Dakota Rural Rehabilitation Corporation, which currently total about $3.2 million.

The Committee also recommends a bill which would provide for administration of the assets of the North Dakota Rural Rehabilitation Corporation if these assets are released to the State of North Dakota by an Act of Congress of the United States. The proposed legislation would require the Bank of North Dakota to do all things necessary and proper to administer all assets of the Corporation released to the State, and would be effective only if such assets are released.

JUDICIARY "A"

House Concurrent Resolution No. 3019 directed the Legislative Council to make a comprehensive study of the entire court system in the State of North Dakota. The study was assigned to the Committee on Judiciary "A" which was comprised of both legislative and citizen members. The legislative members were Senators Donald C. Holand, Chairman, Francis Barth, John D. Coughlin, Guy Larson, and David Nething; and Representatives Milon Austin, Henry Lundene, and John McGauvran.

Citizen members of the Committee were Supreme Court Judges Obert C. Teigen and Harvey Knudson; District Judges Douglas B. Heen, Clifford Jansonius, and Ralph Maxwell; County Judges Gerald G. Glaser and Donald E. McCullagh; and Messrs. Ward M. Kirby and Vernon R. Pederson. In addition, Mr. Vance Hill served, without compensation, as an advisory consultant to the Committee.

The report of the Committee on Judiciary "A" was submitted to the Legislative Council at the biennial meeting of the Council held at Camp Grafton. The report and recommended legislation were adopted for submission to the Forty-third Legislative Assembly by the Legislative Council in November 1972.

In approaching this study, the Committee recognized that the passage of the study resolution did not imply that there was anything drastically wrong with the court system in North Dakota. However, the Committee was also aware that there were many areas in which needed improvements could be made.

Because the scope of the study was so broad, the Committee took several steps to narrow it and to focus attention on particularly serious problems. First, the Committee directed a letter-questionnaire be sent to the judges of every court in the State, requesting their comments as to the problems within their courts, and the court system in general, which they felt to be most pressing. The comments received covered the whole field of judicial administration, and included such things as creating a new county court structure for each county in the State similar to the present county courts of increased jurisdiction; reducing the size of juries to try both civil and criminal cases; authorizing district court jury cases to be tried at a central point within the district; and providing that all judges be required to continue their judicial education throughout their judicial careers.

Following that survey, the membership of the Committee itself was surveyed concerning nine possible areas of Committee study. These areas were:

1. Unification of the court system;
2. Reduction of the number of jurors called to hear civil or criminal cases;
3. Providing a new procedure for the handling of traffic offenses;
4. Providing procedures for the removal of judges for disability or misconduct in office;
5. Providing for redistricting of judicial districts;
6. Providing that jury terms for district courts may be held at a central location within a judicial district;
7. Studying the adequacy of mileage payments to district judges;
8. Studying alternative methods of replacing judges who have vacated their office for one reason or another; and
9. Providing for the recording of court proceedings in all of the State's courts.

The survey of the Committee membership revealed that the Committee was most interested in studying unification of the court system; reduction of the number of trial jurors necessary to try a case; and provision of different methods of handling most traffic offenses.

During the remainder of the interim, the Committee focused its attention on these three study areas, and is only making recommendations regarding those three topics. However, provision for a unified court system does involve some consideration of replacement of judges who have resigned, and removal of judges from office for misconduct or disability.

Prior to the commencement of the Committee's work, the staff of the Legislative Council made application for and was awarded a federal grant, through the Combined Law Enforcement Council, of $11,470. This grant award was used to defray a portion of the costs of the Committee's study.

ADMINISTRATIVE DISPOSITION OF TRAFFIC OFFENSES AND "POINT SYSTEM"

As background to its consideration of new methods of providing for disposition of certain traffic offenses, the Committee studied the administrative disposition plan which is operational in New York City, and the so-called "no-fine system" of the Province of British Columbia.

The British Columbia system provides that traffic offenders will simply have their infractions noted with a central licensing division, and, when a certain number of points are reached, their licenses will be suspended. If a driver wishes to contest his traffic violation charge, he pays a $10 fee and has a hearing before a standard British Columbia traffic court. If, at the hearing, he is found to have committed the infraction, the court reports that fact to the central licensing authority which assigns the appropriate number of points. The offender does not receive a fine or a jail sentence. Certain of the more serious traffic offenses, such as drunken driving, are excepted from the operation of the British Columbia system.

In contrast to the British Columbia system, the New York City system provides an entire new layer of administrative hearing officers to hear cases of persons charged with most traffic offenses. Under the New York City plan, a violator, stopped for a traffic infraction, can: a. plead guilty, by mail or in person; b. plead guilty, with an explanation; or c. plead not guilty, by mail or in person. Generally, a person pleading guilty is not required to appear, and if that is the case, he simply fills out part of a form given to him by the arresting officer and indicates that he admits the charge. This written guilty plea, along with a scheduled fine amount, is mailed to the Administrative Adjudication Bureau.

If an offender wishes to plead guilty with an explanation or to plead not guilty, he must appear before one of 22 hearing officers located in one of the five hearing offices in the city. All of the hearing officers are attorneys, and have been given orientation and training in traffic offense disposition.

If, at the hearing, an offender is found guilty, the court may fine him, but may not sentence him to imprisonment. The offender may appeal to a three-man board of appeals for a flat nonrefundable $10 appeal fee. The Appeals Board is made up of three attorneys appointed by the Commissioner of the Motor Vehicle Department.

In addition to studying existing "administrative disposition" plans, the Committee conducted a survey of the municipal courts of 226 North Dakota cities to determine the amount of revenue generated by those municipal courts. One hundred thirty-eight of the 226 questionnaires (61 percent) were returned, and 127 of those questionnaires returned indicated that the city questioned did have a municipal court. Twenty-three of the returned questionnaires showed no revenue generated and no amount budgeted for or paid to a municipal judge. Five of the answering cities indicated that they had specific contractual relationships with the county (within which the city was located) to provide law enforcement, and all violations within the municipal territorial limits were taken to the county courts.

Of the remaining 99 answering cities with municipal courts, six had budgeted amounts for operation of the municipal court, but had shown no revenue therefrom for calendar or fiscal year 1970. The revenues generated during that same period by the remaining 93 municipal courts ranged from $10 for the Cities of Robinson and Goodrich to $201,297 for Fargo.

The total revenue generated by all answering courts was $805,609.47. Eighty-four and five-tenths percent of that total amount ($681,091.67) was generated by the municipal courts in the 11 "larger" cities, namely: Fargo, Grand Forks, Bismarck, Minot, Jamestown, Valley City, Williston, Wahpeton, Dickinson, Mandan, and Grafton. (The City of Devils Lake did not return a questionnaire.) Revenue generated by the remaining 82 cities reporting revenue was $124,517.80.

Forty-six of the 93 cities replying and showing revenue indicated that they had provided a fixed compensation for their municipal judges. Amounts of compensation ranged from $50 to $9,600 annually. One city, Fredonia, showed no revenue, but paid $65 annually to one person, who acted as both judge and city treasurer.

The questionnaire also called for an estimate as to the percentage of total city revenue represented by municipal court revenue. The answers ranged from 1/10 of one percent to 15 percent. Municipal court revenue made up less than one percent of the total revenues in 28 cities; from one to two percent in 16 cities; over two but less than three percent in seven cities; over three but less than four percent in four cities; over four but less than five percent in five cities; over five but less than six percent in four cities; over six but less than seven percent in three cities; over seven but less than eight percent in one city; over eight but

less than nine percent in one city; and over nine but less than 10 percent in one city. In Wahpeton, municipal court revenue equaled 11.23 percent of the general fund revenues, and in Minto, municipal court revenues equaled 15 percent of general fund revenues.

When asked a question concerning the percentage of fines collected which could be attributed to violation of city traffic ordinance, the cities' answers ranged from 20 percent to 100 percent, but the great bulk of the answers were in the 90 to 100 percent range.

The survey also revealed four methods of compensating municipal judges. First, through a fixed annual compensation; second, through allowing the judge to keep court costs; third, on the basis of a fixed dollar amount per case (this method, in practice, may amount to the same thing as the second method listed); and fourth, by allowing the judge to keep all or a portion of any fine imposed.

With this background in mind, the Committee commenced work on a bill to provide for a different method of disposition of all traffic offenses, except:

1. Driving while under the influence of intoxicating liquor or narcotic drugs;
2. Operating while an habitual user of narcotic drugs;
3. Reckless driving or aggravated reckless driving;
4. Negligent homicide;
5. Manslaughter resulting from the operation of a motor vehicle;
6. Hit and run offenses;
7. Driving while license or driving privilege is suspended or revoked; and
8. Drunken or reckless driving of a snowmobile.

The Committee determined that all other traffic offenses, moving and nonmoving, would be covered by the bill. The bill also applies to city ordinance violations which are equivalent to the covered state traffic offenses.

Next, the Committee had to determine whether it wanted to create a new body of administrative hearing officers to handle disposition of traffic offenses, or, as in the British Columbia system, rely on the existing court structure, but vary the procedures therein. The Committee chose the latter course.

The rationale behind the Committee's desire to provide alternative methods of disposing of most traffic offenses was primarily to decrease the caseload of the "lower" courts, and to reduce the number of appearances which private citizens would have to make before judges without legal training or training in traffic law enforcement. A secondary but important consideration was that the current system of disposing of traffic offenses did not seem to be adequately deterring poor driving habits.

The Committee considered at great length which form of sanction would have the best result in terms of deterrence of poor driving habits. Suspension of a driver's license or privilege to drive was considered the most effective sanction, so the Committee decided to emphasize that sanction and de-emphasize terms of imprisonment and monetary penalties.

The second area of Committee concern in regard to this topic was how to ensure that drivers' license suspensions were ordered in a uniform manner. To solve this problem, the Committee focused its attention on authorization of a "point system" whereby the central driver licensing agency would suspend a license when a driver's record showed an accumulation of the required number of points.

After settling these basic policy issues, the Committee considered four drafts of a bill providing the administrative disposition procedures, and three separate drafts of a bill providing for the "point system". When these separate bill drafts had been reworked to the Committee's satisfaction, they were adopted and the staff was directed to consolidate them into a single bill for presentation to the Legislative Council.

Thus, the Committee is recommending a bill which would provide that everyone cited for a state or municipal traffic offense, except those serious offenses previously listed is deemed to be charged with a noncriminal offense.

After the charge, the alleged offender has several alternatives available to him. Under Section 2 of the bill, he can appear before the designated official and pay the statutory fee (as provided in Section 6 of the bill) prior to or at the time scheduled for his first hearing on the charge. The offender could also choose to post bond, in person or by mail, and forfeit that bond (the amount of which will be equivalent to the statutory fee) by not appearing at the first hearing.

If the person desires to appear and make an ex-

planation of his action, he may do so while still admitting the violation. If the alleged offender takes the latter course, the hearing official may waive, reduce, or suspend the statutory fee or bond. An offender who elects to follow any of the foregoing procedures is deemed to have admitted the charge, and the hearing official is to certify that fact to the licensing authority, and to also certify whether the offender, in committing the offense, contributed materially to a traffic accident; and, if the offense charged was speeding, whether the offender exceeded the speed limit by more than 15 miles per hour.

If the alleged offender does not choose one of the three methods of proceeding previously noted, he may request a hearing which can be held at the time scheduled in the traffic citation, or at some future time within 90 days. However, if a person requests a hearing, and is not indigent, he is to deposit $15 as a prepayment of all costs of the hearing.

If the person is found not to have committed the offense, the $15 hearing cost prepayment is returned, but it is retained and deposited with the treasurer of the county or city, as the case may be, if the offender is found to have committed the offense. In the latter case, the hearing official will also levy the statutory fee and will report the fact of commission to the licensing authority, and report whether the violation contributed materially to a traffic accident, and whether, if the offense charged was speeding, the speed charged was more than 15 miles in excess of the speed limit.

The fact that a person has admitted a traffic violation, or has been found to have committed the violation, is not to be admissible as evidence in any other legal action or proceeding, other than one involving the offender's driving license or privilege. The offender may appeal an adverse decision by the hearing official to the district court, where he may demand a jury trial. If he is again found to have committed the violation, no further appeal will be allowed.

During the course of the appeal, the district court may, at the offenders' request, order the licensing authority to stay any action suspending the offender's driver's license for a period not to exceed four months; or order a stay and direct the licensing authority to issue a temporary restricted driving certificate to the offender. The temporary restricted driving certificate would only be effective for four months, and could contain provisions restricting the offender to driving only to or from work, or to driving only on weekdays, or similar restrictions.

The court may also deny any application for a stay or a temporary driving certificate. If the offender wishes to apply for a stay pending appeal, he must accompany his application with a certified copy of his driving record, which he can acquire from the licensing authority (Safety Responsibility Division) for two dollars.

If the district court or the jury, on trial of the appeal, finds that the offender did not commit the offense, the Clerk of the District Court is to report that fact to the licensing authority as soon as possible. Appeals are to be prosecuted by the State's Attorney in cases involving violation of state law, or by the City Attorney if the appeal is from a finding of violation of a municipal ordinance.

Because the offenses covered by the Act are deemed noncriminal, the prosecution must only prove its charge, at the hearing or on appeal, by a "fair preponderance of the evidence", which is the burden of proof presently required in civil lawsuits. In addition, if an offender appeals, the district court shall try the appeal under the present rules of civil procedure.

The "hearing official", who presides at the first hearing on commission of a violation, is defined by the Act to include district judges, judges of county courts with increased jurisdiction, county justices, and municipal judges. In addition, when provided by statute, the district judge may appoint a person to serve as a hearing official for all or a portion of a judicial district. In order for this appointment power to exist, the Legislature would have to take specific action, in another bill, to create it. The Committee is not recommending such a bill at this time.

Section 4 of the bill provides that a person who fails to choose one of the methods of proceeding outlined above is deemed to have admitted commission of the violation charged, and the hearing official is to report that fact to the licensing authority. If the person charged fails to appear at the time designated in the citation, without paying the statutory fee or posting and forfeiting bond, he is also guilty of a misdemeanor. Section 5 of the bill sets out those types of traffic offenses which will not be disposed of under the new procedures. Those sections have been previously listed in this report. A person charged with one of those exempted offenses would be handled in exactly the same manner as at present. He would also be subject to the penalties, including imprisonment, presently provided by statute or city ordinance.

The statutory fees for noncriminal dispositions

are set out in Section 6, and would be $10 for nonmoving violations; $20 for moving violations; $40 for speeding in excess of 15 miles per hour over the speed limit; and $30 for careless driving. To ensure that these statutory fee limits are maintained for violations of city ordinances, Section 40-05-06 of the Century Code is amended to provide that city traffic ordinances cannot establish fees in excess of those established by Section 6.

The Committee believes that the statutory fee schedule should return revenue to the cities at approximately the same level reached under current law. Any reduction in revenue resulting from this bill, should be offset by the fact that court costs should be substantially lowered. This latter conclusion is based on the premise that most traffic offenders would choose to pay the statutory fee or forfeit bond without requesting a hearing.

Section 7 of the bill requires the Safety Responsibility Division to prepare a form to become a part of the Uniform Traffic Summons and Complaint. The form is to give drivers notice that they have the procedures previously outlined available to them, and also notify them that an admission or finding of commission of the offense will result in points being assessed against their driving record.

Sections 8 and 9 of the bill define moving and nonmoving violations by reference to Century Code sections presently defining the covered traffic offenses. Other sections of the bill amend those offense definitions to ensure that no punishment of imprisonment, or fine in excess of the statutory fee can be imposed if a driver is found to have committed those violations.

The essence of the "point system" established by the bill is contained in Sections 10 through 13. Section 10 provides that when the licensing authority receives a report of an admission or adjudication of a traffic violation, or conviction of a traffic offense, it is to enter the appropriate number of points on that licensee's driving record, and when the driving record shows an accumulation of 12 or more points, the authority is to notify the licensee that it intends to suspend his driver's license. The notice shall also contain a statement to the effect that the licensee may have an administrative hearing, if he so desires, and if he requests it in writing within 10 days after the notice was mailed.

The Safety Responsibility Division (licensing authority) is authorized to receive traffic offense conviction reports from federal, military, and tribal courts, as well as from the state courts and municipal courts.

If the accumulation of points on the driver's record is confirmed, after hearing or opportunity for hearing, the Safety Responsibility Division is to suspend his license for seven days for each point above 11. If a licensee's point total goes over 11 due to a violation involving the height, width, or weight of a vehicle, his license will not be suspended unless the violation contributed to a vehicular accident. In addition, points assigned due to a violation of that type will be stricken from his driving record after three months without another violation.

The point system schedule is as follows:

NONCRIMINAL VIOLATIONS

Noncriminal Adjudication or Admission of:	Points Assigned
(1) Overtime parking in violation of city ordinances	0 points
(2) Failure to display license plates, or improper display of license plates	1 point
(3) Permitting unauthorized minor to drive	2 points
(4) Permitting unauthorized person to drive	2 points
(5) Unlawful stopping, standing, or parking on highway	2 points
(6) Unlawful parking in specified prohibited places	1 point
(7) Improper parking in violation of section 39-10-50, or an equivalent ordinance	1 point
(8) Leaving motor vehicle improperly unattended	1 point
(9) Opening or leaving motor vehicle doors open when unsafe to do so	1 point
(10) Operating without required reflectors or clearance lamps	2 points
(11) Improperly mounted reflectors or clearance lamps	1 point
(12) Improper reflectors, clearance lamps, or marker lamps	1 point
(13) Improper lighting on vehicle parked at night	2 points

(14) Any other nonmoving violation defined by statute or ordinance and classified as nonmoving by the licensing authority ..... 1 point

(15) Any moving violation involving the provisions of chapter 39-21, or equivalent ordinances ..... 3 points

(16) Any other moving violation ..... 4 points

(17) Careless driving in violation of section 39-09-01, or equivalent ordinance ..... 6 points

(18) A violation of section 39-09-02, or equivalent ordinance, where charge is speeding more than fifteen miles per hour above the lawful limit ..... 6 points

(19) Violating or exceeding restrictions contained in a restricted license issued pursuant to section 3 of this Act, or section 39-06-17 ..... 12 points

(20) Fleeing in motor vehicle from law enforcement officers in motor vehicle when such action constitutes a specific offense under statute or ordinance ..... 10 points

(21) Racing motor vehicles when such action constitutes a specific offense under statute or ordinance ..... 10 points

CRIMINAL VIOLATIONS

Conviction of:	Points Assigned
(1) Reckless driving, in violation of section 39-08-03, or equivalent ordinance	8 points
(2) Aggravated reckless driving, in violation of section 39-08-03, or equivalent ordinance	12 points
(3) Leaving the scene of an accident involving property damage in violation of section 39-08-05, or equivalent ordinance	14 points
(4) Leaving the scene of an accident involving personal injury or death in violation of section 39-08-04, or equivalent ordinance	18 points
(5) Driving while under the influence in violation of section 39-08-01, or equivalent ordinance	15 points
(6) Driving while an habitual user of narcotic drugs in violation of section 39-08-01, or equivalent ordinance	15 points

If commission of the violation also "contributed materially to an accident", the licensing authority is directed to assess three additional points against the person's driving record. A suspension period, ordered because the required number of points are reached, does not commence until the suspended license is delivered to the licensing authority. However, deposit of the license in the mail is deemed to be constructive delivery.

Section 11 of the bill authorizes the issuance of temporary restricted operator's licenses valid after the first seven days of the suspension until its end. The Committee considered this provision at length, and heard testimony to the effect that the Highway Commissioner would neither support nor oppose a statute permitting the Safety Responsibility Division to issue temporary restricted licenses.

After a licensee has completed his period of suspension, the licensing authority is to reduce the point total shown on his driving record to 11 points, and suspension is again to be ordered when that total reaches 12 or more points. A licensee's point total can be reduced by four points for each 12-month period of violation-free driving. Thus, it would take three violation-free years to totally erase an 11-point record.

In addition, the licensing authority is authorized to reduce a point total by one point for each eight hours of successful completion of a driver training course, with the limitation that no more than eight points shall be stricken from the record by this method in any three-year period. The licensing authority is also authorized to reduce the number of points on a driver's record for successful completion of an alcoholism or narcotics treatment program. The number of points stricken will be seven, but no reduction shall be made unless the licensee's driving record included, at the time of suspension, points assigned for drunken driving, or driving under the influence of narcotics.

The remainder of the bill consists of necessary amendments to current law to make it conform with the administrative disposition and point system plans. One amendment is to the form of the Uniform Traffic Summons and Complaint, in order to provide a space on that form for notation as to

whether the traffic offense committed contributed materially to a traffic accident.

The Committee was very conscious that if license suspension is to be the main deterrent to poor driving, then offenders whose licenses have been suspended should be forced to stay off the road. However, the Committee did not attempt to arrive at a means of ensuring that suspended licensees do not drive. Although the Committee felt that providing a solution to this problem was somewhat beyond the scope of its study, many possible solutions were discussed, including provision for a distinctive license plate which would be issued to suspended licensees in place of their normal plates. Mandatory jail sentences for driving while the driver's license was suspended, or mandatory impoundment of the offender's car were also discussed as possibilities.

REDUCTION IN SIZE OF TRIAL JURIES

The second topic on which the Committee focused its attention was the desirability of reducing the size of trial juries. The Committee was cognizant of the fact that jurors' fees have recently been raised by the Legislature, and it felt that there may well be support for reduction in jury size.

As background to its consideration of this topic, the Committee noted the recent decisions of the United States Supreme Court in **Williams v. Florida**, 399 US 78 (1969); **Johnson v. Louisiana** (decided May 22, 1972); and **Apodaca v. Oregon** (decided May 22, 1972). In the **Williams** case, the court upheld a Florida statute authorizing a six-man criminal trial jury. The court held that a 12-man jury is not a necessary ingredient of the right to a trial by jury provided by the Sixth Amendment.

In the **Johnson** and **Apodaca** cases, the court upheld provisions of the Louisiana and Oregon Constitutions which permit less than unanimous verdicts, except in cases involving capital punishment in Louisiana and cases of first-degree murder in Oregon. The court stated the fact that a verdict was reached by less than all of the jurors in a criminal case did not, standing alone, establish the kind of reasonable doubt concerning the commission of the offense which the state has the burden of overcoming. The Louisiana provision upheld allowed nine of 12 jurors to render a verdict, while the Oregon provision provided that 10 of 12 jurors could render a verdict.

In light of the foregoing decisions, the Committee feels that there are no federal constitutional obstacles to reducing the number of trial jurors in North Dakota. The Committee believes that such a reduction should help to speed the trial process, since jurors should be able to be selected much more rapidly, and it is possible that it will take less time for a smaller jury to reach a verdict, especially if unanimity is not required.

The Committee staff wrote to several states with less than 12-man juries to find out if those states had ever done surveys on the time and cost savings resulting from the smaller trial juries. The states replying indicated that they had never done such studies. One state's reply indicated that the primary reason that a cost study was not done was because the state officials interested in the jury system felt it was obvious that there would be a cost saving. In Minnesota, which recently reduced its jury size from 12 to six, estimates have been made indicating that counties will save 25 to 40 percent of their previous jury costs.

In order to recognize these cost savings and to aid in making the trial system more efficient and speedy, the Committee is recommending a concurrent resolution proposing an amendment to Section 7 of the Constitution. That section would be amended to reduce jury size from 12 to six for both civil and criminal cases, but would authorize the Legislature to increase the number of jurors, but not to over 12, in any class of civil or criminal cases. The amendment also would allow the Legislature to provide that non-unanimous verdicts may be rendered, but not by less than 80 percent of the jurors.

The Committee realizes that adoption of this amendment will require further legislative action to amend existing inconsistent statutes, and would also put the Legislature to a decision concerning the desirability of raising jury size in any class of civil or criminal cases. In order that the Legislature have time to take those actions, the Committee is providing that the proposed amendment, if adopted, shall not take effect until July 1, 1975. Thus, the 1975 Legislature could pass all necessary amendments, and could make the policy decision to raise the size of trial juries if that were desired, prior to the amendment becoming effective. The resolution will be voted on at the primary election in 1974, so there will be enough time to consider and draft legislation implementing it following the adoption.

The last topic of Committee study was the unification of the State's court system. The Committee was aware of the Judicial Article contained in the proposed Constitution of 1972, and also noted

a study done under the auspices of the Combined Law Enforcement Council which recommended that a "unified court system" be created.

The Committee believed that the Judicial Article proposed by the Constitutional Convention was not, in itself, an extremely controversial issue, and the Committee believes that the electorate would accept a revision of the Judicial Article offered separately.

Therefore, the Committee is recommending a concurrent resolution which would create a new Article IV of the Constitution unifying the court system under the Supreme Court and removing the constitutional status of all courts but the Supreme Court and the District Court. The Committee decision to approve this resolution was not unanimous, as one member voted in the negative on the motion for adoption.

Section 1 of the resolution creates the new Article consisting of 16 sections. The first section of the new Article states that the judicial power of the State is vested in a unified judicial system made up of the Supreme Court, a District Court, and other courts created by the Legislature. The Committee's intent in approving this section, and the entire resolution, is that the current court structure will not be changed following adoption of the new Article and will continue to operate as it presently does, until affirmative legislative action is taken to modify it.

The second section of the proposed Judicial Article names the Supreme Court as "highest court of the State" and gives it appellate jurisdiction and original jurisdiction to issue such original and remedial writs as may be necessary in the proper exercise of its jurisdiction. The section sets the membership of the court at five "justices". One of the justices is to be designated Chief Justice by a method established by the Legislature. This section is essentially a revision, without substantial change, of current constitutional and statutory provisions.

Section 3 of the Article gives the Supreme Court the power to promulgate rules of procedure, including appellate procedure, which will be followed by all of the courts of the State. That court is also given power to regulate admission to the practice of law, and to handle discipline and disbarment of lawyers. The Supreme Court currently has these powers under the present Constitution and statutes.

The third section of the Article goes on to state that the Chief Justice is to be the administrative head of the "unified judicial system". As such, he can assign judges, including retired judges, to temporary duty in any court or district where they may be needed. He is also to appoint a court administrator for the unified judicial system. The court administrator's powers, duties, qualifications, and term of office are to be provided by court rule, and the court can promulgate rules dealing with the powers, duties, qualifications, and terms of office of other court officials, such as the Clerk of the Supreme Court, and the State Law Librarian. Administrative supervision over other courts of the State is presently vested in the Supreme Court, and a court administrator was appointed in 1971.

The fourth section of the new Article provides that a majority of the justices comprise a quorum, but that no statute will be declared unconstitutional unless four justices make that decision. This comports with current constitutional provisions.

The next section provides for the decisions of the Supreme Court to be "concisely stated in writing" and signed by the concurring justices. It provides that if a justice wishes to dissent he may do so, and his dissent may be in writing. This language is a revision of the provisions of current Section 101 which provides essentially the same thing.

The sixth section of the Article provides that "appeals may be taken in such cases and under such limitations as provided by law". This section would replace the provisions of current Sections 86, 103, and 109 which state that the appellate jurisdiction of the Supreme Court and the District Court may be regulated by law.

The seventh section of the Article provides for the election of Supreme Court justices, and states that their salaries shall be set by law, but the salary of a particular justice may not be reduced during his term of office. Justices will be elected for 10-year terms, as is presently the case, and one of the five justices will be elected every two years. However, the newly proposed Section 99 provides that if an incumbent judge is running unopposed, the ballot question is to be "Shall (such judge) be retained in . . . office". Thus, the electorate will be given a chance to reject a judge if it is unsatisfied with his performance even though the judge does not have an opponent.

The provision for election of Supreme Court justices, and their terms of office, is the same as is currently provided; however, the provision for confirmation of incumbent justices (and district court judges) who run unopposed is new. The Judicial Article proposed by the Constitutional Convention

also contained such a provision, and it was inserted in the resolution recommended by the Committee after favorable testimony from the Executive Director of the Constitutional Convention staff, and a Convention delegate.

The eighth section of the new Article establishes the jurisdiction of the district court. It is to have original jurisdiction of all causes, except as otherwise provided by law. This provision is essentially the same as the provisions of Section 103 of the current Constitution, with the difference that the exceptions to original jurisdiction of the district court are presently made by the Constitution itself. This is due to the fact that the jurisdiction of the "lower courts" in this State is established in the current Constitution.

The next section of the Article provides for the establishment of judicial districts. Judicial districts are to be established by order of the Supreme Court, and the number of judges to be elected in each district is to be determined by the Supreme Court. This section also sets the term of office of district judges at six years and provides that their compensation shall be set by statute, but the compensation of a particular district judge is not to be reduced during his term of office. District judges will be elected in the same manner as at present. This section would replace Sections 104, 105, and 106 which establish the number of judicial districts at six, and vest responsibility in the Legislature to raise that number "whenever two-thirds of the members of each house" shall so decide.

The tenth section of the new Article sets forth the qualifications of justices and district judges. They are to be United States citizens, state residents, and licensed attorneys. In addition, the Legislature is given the power to prescribe additional qualifications. The Legislature also is given authority to prescribe the qualifications of lower court judges, and to set their terms of office.

The section also provides that justices and district judges are not to practice law, or to hold any other public office "not judicial in nature". In addition, no duties are to be imposed upon Supreme Court justices unless they are judicial duties. Paying a judge from court fees is prohibited, and the amount of his compensation is not to be measured by the amount of fees or other moneys received by his court, or measured by the amount of judicial activity of his office.

The eleventh section of the new Article provides that the Chief Justice can assign a judge, or retired justice or judge, to sit in place of any justice or judge who has a conflict of interest in a pending cause, or is otherwise unable to sit because of physical or mental incapacity. This section is an extension of current Section 100 which allows the Supreme Court to call a district judge to sit in place of a disqualified Supreme Court judge.

The twelfth section of the new Article requires the Legislature to set a procedure for the removal of justices and judges for misconduct, incompetence, or disability. After the Legislature has established such procedure, the procedure will be utilized in lieu of impeachment. This is a new provision, as Supreme and District Court judges are currently removable only by impeachment.

The thirteenth section of the new Article gives the Legislative Assembly authority to provide mandatory retirement of justices and judges. This is a new provision and would allow the Legislature to decide at what age, if any, a person should be forced to retire from judicial office.

The fourteenth section mandates that the Legislature create a judicial nominating committee which will have the duty of supplying a list of candidates to the Governor from which he is to fill any vacancy in the office of justice of district judge. Appointments made by the Governor to fill such vacancies are to continue until the end of the term vacated, or until the first Monday in January following the first general election occurring after two years from the date of the appointment, whichever comes first. In other words, an appointed judge is given a two-year trial in office, and then must run in the general election for the remainder of the term, unless the time remaining on the term vacated is less than the time between appointment and the general election falling after a two-year period from the date of appointment. A judge running unopposed for election following an appointment under this section would be subject to the provisions of the next section relating to confirmation.

The next section has been previously discussed, and deals with confirmation of incumbent judges who run for election unopposed. If the incumbent judge does not receive a majority "yes" vote, his office is deemed vacant, and it will be filled in the manner provided in the preceding section.

The sixteenth section of the new Article is simply intended to replace present Section 120, and the language of the new section is exactly the same as the language of existing Section 120. The Committee felt that this section did not really deal

with the judicial system. The Committee did not wish to raise unnecessary opposition to the entire proposal by considering the topic of arbitration of disputes.

During the course of its consideration of this resolution, the Committee heard testimony favoring the creation of an intermediate appellate court in North Dakota. The Committee did not believe that creation of an intermediate appellate court was necessary at this time, but the provisions of the first section of the new Article would allow the Legislature to create such a court should it be needed in the future.

JUDICIARY "B"

House Concurrent Resolution No. 3050 directed the Legislative Council to review and revise the substantive criminal statutes of North Dakota, or so much thereof as may reasonably be revised during the 1971-73 legislative interim. This study was assigned to the Committee on Judiciary "B" consisting of both legislative and citizen members.

The legislative members of the Committee were: Senators Howard A. Freed, Chairman, and Jack Page; Representatives Myron Atkinson, Peter S. Hilleboe, James Kieffer, Jack Murphy, and Grace Stone.

Citizen members of the Committee were: Supreme Court Judge Ralph Erickstad; District Judge W. C. Lynch; Kirk Smith, Judge of the Grand Forks County Court with Increased Jurisdiction; Municipal Judge Harry J. Pearce; Professor Thomas Lockney, School of Law, University of North Dakota; Messrs. Rodney S. Webb and Albert A. Wolf, Attorneys at Law. (Note: Professor Lockney replaced Professor Larry Kraft of the Law School as a member of the Committee prior to the March 2-3, 1972, meeting of the Committee.) Professor Kraft resigned from the Committee due to the press of his other work.

The Committee's work was funded in part by a federal grant in the amount of $24,570 obtained through the Combined Law Enforcement Council. The Committee's work in revising the Criminal Code was carried out during 12 meetings, or 23 Committee working days. Throughout its study, the Committee was aided by the presence and assistance of Mr. Vance Hill. Mr. Hill, who is also working on a federal grant was independently interested in Criminal Code revision and agreed to work with the Committee.

The report of the Committee on Judiciary "B" was submitted to the Legislative Council at the biennial meeting of the Council held at Camp Grafton. The report and recommended legislation were adopted for submission to the Forty-third Legislative Assembly by the Legislative Council in November 1972.

METHOD OF STUDY

The Committee recognized early in the interim that it could not reasonably hope to accomplish a revision of all of the criminal statutes of the State, but felt that it could accomplish revision of those criminal offense definitions contained in Title 12 of the Century Code, entitled "Crimes".

At its first meeting, the Committee considered two possible methods of attacking the Code revision project. First, the Committee could start at the beginning of Title 12 and work through all of its sections, revising, eliminating, or adding criminal definitions as the Committee felt necessary. The second method of proceeding would be to use a Model Criminal Code, or Criminal Code of another jurisdiction, as a starting point, and revise it to fit North Dakota situations, adding criminal definitions where the Code selected did not cover matters considered to be important in North Dakota.

Before choosing either method, the Committee set out some other goals and criteria to be followed in its revision project. First, the Committee agreed that all offenses should be classified, so that the revision effort would have a common base to which to refer, and so that future legislative action creating crimes could be keyed to an existing offense classification. It was noted that current North Dakota law provides an almost innumerable range of potential sentences for individual offenses, and in many instances the sentences have been created on an **ad hoc** basis, with no attempt to relate the seriousness of the offense defined to other comparable offenses. The Committee believes this situation arises because statutes defining offenses are passed at one legislative session without a clear picture of the manner in which offenses of similar gravity have been dealt with in the past. To overcome this problem, the Committee determined to establish a complete offense classification.

The next goal of the Committee was to ensure that the revision of a particular offense would be considered in light of three criteria: first, to determine whether the offense should be retained; second, to determine its seriousness and where it should fit in the offense classification plan; and third, to determine whether consolidation of that offense with other related offenses could take place.

Another goal established by the Committee was to design a sentencing structure which would not use the mandatory minimum sentence. It was the Committee's feeling that the mandatory minimum sentence was not a valid rehabilitative tool. Finally, the Committee decided to ensure that the use

of restitution as part of the potential sentencing structure would be included for study, and, if found feasible, that workable provisions would be made for the use of restitution.

With these goals in mind, the Committee decided to use the first method of proceeding, i.e., a section-by-section review and revision of current provisions of Title 12. In conjunction with that decision, the Committee created a subcommittee to prepare an offense classification plan, and when that subcommittee had reported, the Committee temporarily adopted the classification plan for its use during the remainder of the interim.

After several meetings, during which the Committee considered numerous revisions of current sections in Title 12, a change in Committee procedure was discussed. Thereafter, the Committee decided that it could progress faster towards its completion of a revision of the criminal offense definitions contained in Title 12 if it used an existing Criminal Code text as a starting base. The Committee considered the text of the Model Penal Code, approved by the American Law Institute in 1962, and the text of the proposed Federal Criminal Code (hereinafter FCC) drafted by the National Commission on Reform of Federal Criminal Laws and finalized on January 7, 1971. The Committee also considered new state codes adopted in the States of Ohio, Kentucky, and Colorado.

Because the Federal Criminal Code was based on the latest research, and had been drafted by a distinguished group of lawyers, judges, and sociologists interested in criminal law, the Committee chose to use the FCC as its starting base.

Thereafter, the Committee considered each relevant section of the FCC, as modified by the staff to fit North Dakota requirements, and, in addition, considered other revised or newly drafted statutes designed to replace current North Dakota law for which there was no equivalent in the FCC.

The original classification plan, temporarily adopted by the Committee, provided four classes of "offenses", and a fifth class, to be known as "violations", for which no term of imprisonment could be imposed as a sentence. The "offenses" were denominated Class A through Class D, and use of the terms "felony" and "misdemeanor" to classify offenses was to be discontinued. However, the FCC classification was based on retention of those terms, and after several meetings, the Committee decided to use the offense classification plan contained in the FCC for the remainder of its study, and to make a decision as to which offense classification plan it would adopt at the end of the study.

Many of the criminal law topics considered by the Committee gave rise to a great deal of controversy within the Committee and in several instances, the controversy could not be satisfactorily resolved. Therefore, the Committee is recommending several bills, including three bills providing alternative definitions of sexual offenses, which will bring these controversial issues before the Legislature separate and apart from the main revision bill. All of these bills will be discussed after the discussion of the main revision bill.

One chapter in the current Title 12 was not revised in substance, but was only renumbered to accord with the new numbering system and the penalty classifications for the offenses in that chapter were revised to accord with the new offense classification system. That chapter was Chapter 12-25, dealing with illegal abortion. In light of the fate of abortion liberalization bills introduced during the last two legislative sessions, and the outcome of the initiative measure to liberalize the State's abortion laws, the Committee decided to forego substantive revision of the current criminal statutes on abortion.

Because of the length of the main revision bill, it will not be discussed on a section-by-section basis in this report. Instead, a chapter-by-chapter analysis will be made with emphasis on the most important points contained in each chapter. The main Criminal Code revision bill proposed by the Committee would create Title 12.1 consisting of 32 chapters and 184 sections. This bill would replace 44 chapters in the current Title 12 consisting of 626 sections. In addition, each of the three sexual offense definition alternatives would replace an additional 21 sections in the present Title 12. This reduction in the length of the Criminal Code was due primarily to two factors: first, due to the consolidation of numerous related offenses into a single-offense definition, such as was the case in the crimes of assault and theft; and second, due to the fact that a general definition of criminal attempt was created, thus replacing numerous sections defining attempts to commit individual crimes.

MAIN REVISION BILL

Chapter 1 of the main revision bill sets forth general provisions concerning construction of the new Criminal Code, and concerning its purposes. Those purposes are set out in Section 12.1-01-02 and are summarized as follows:

1. To ensure public safety: a. By imposition

of merited punishment; b. Through the deterrent influence of the penalties provided in the new Criminal Code; c. Through rehabilitation of convicted offenders; and d. Through imprisonment of offenders when necessary to prevent recurrence of serious criminal behavior.

2. To define the limits and systematize the exercise of discretion in punishment and to give fair warning of what action is prohibited by the criminal law, and the potential consequences of taking that action.
3. To prescribe penalties which are in proportion to the seriousness of the offense, and which permit, through the provision of sentencing alternatives, recognition of differences in the methods of rehabilitation which will successfully work on an individual offender.
4. To prevent condemnation as criminal conduct that is without guilt, and to condemn as criminal conduct that is with guilt.
5. To prevent arbitrary or oppressive treatment of persons accused or convicted of offenses.
6. To systematize the exercise of state criminal jurisdiction, and to define the scope of state interest in law enforcement against specific offenses.

The chapter also includes a section containing general definitions of 28 words or phrases which are used throughout the new Code. The words or phrases defined include "law enforcement officer" or "peace officer", which is defined to mean a public servant who is authorized to enforce the law or to conduct or engage in investigations or prosecutions for violation of law. The term "included offense" is defined in a way which the Committee hopes will clarify this presently confusing area of the law. An included offense is one which is established by proof of the same or less than all of the facts required to establish commission of the offense charged, or which is an attempt or solicitation to commit the offense charged, or which differed from the offense charged only in that it constituted a less serious harm or risk of harm to a person, property, or public interest. "Public servants" are defined as all officers or employees of government, including law enforcement officers, and any person participating in the performance of a governmental function. However, witnesses are not included in the definition.

The second and third chapters of the main revision bill deal with the basis of liability for offenses, and define standards of culpability. The five standards of culpability (or guilty intent) are: "intentionally", which is the highest standard and would relate to the most serious criminal offenses, such as murder: "knowingly"; "recklessly"; and "negligently". In addition, the standard "willfully" is defined as including conduct which is either intentionally, knowingly, or recklessly engaged in. These standards of culpability would replace the standards defined in Section 12-01-04. The current standards are: willfully, negligently, corruptly, maliciously, and knowingly.

Individual accomplice liability is delineated, as is corporate criminal liability. Generally, a corporation may, under the proposed Code, be convicted of any offense committed by one or more of its agents when the agent's conduct is authorized by the board of directors, an executive officer, or a person who controls the policy of the corporation, whether or not he is an officer or director. In addition, a corporation may be convicted of any misdemeanor committed by an agent, and of any offense where an affirmative duty is imposed on the corporation, and the corporation omits to perform it.

Individual accountability for action taken on behalf of "organizations" is also covered. Generally, an individual is legally accountable for any act performed on behalf of an "organization" to the same extent as if he performed it in his own name or on his own behalf. If an individual is convicted as an accomplice of an "organization", he is subject to the same sentence as when a natural person is convicted of the primary offense. "Organization" is defined as including any legal entity, whether or not organized as a corporation or unincorporated association, but excludes entities organized for the execution of a governmental program. The present reference to corporate criminal liability in Title 12 is contained in Section 12-06-11 which provides that a corporation, if convicted of a felony, can be punished by a fine of not less than $500 nor more than $5,000.

The fourth chapter of the main bill (12.1-04) contains defenses to criminal charges. It would replace Chapter 12-05, which is the present chapter in Title 12 outlining criminal defenses. The first section of the new chapter continues the provision of current law that children under seven years of age are not deemed capable of commission of a criminal offense. In addition, the section provides that a person shall not be prosecuted as an adult if the offense was committed while he was under 16. This provision accords with current provisions contained in the Uniform Juvenile Court Act, Chapter 27-20, NDCC.

The chapter also defines the scope of the de-

fense of mental disease or defect (replacing "insanity"), and the extent to which intoxication is a defense. Essentially, the mental disease or defect defense corresponds to the present **McNaghten** defense allowed in North Dakota, but adds the so-called "irresistible impulse" defense. This latter portion of the new mental disease or defect defense is presently not allowed in North Dakota, as Section 12-05-02 specifically prohibits a defense based on "morbid propensities".

The mental disease or defect tests set forth were the subject of much discussion by the Committee, and, in fact, some members on the Committee would have favored the abolishment of the "insanity" defense, with the defendant's mental state becoming simply a factor to be considered in determining his punishment. However, the Committee believed that such a step should not be taken without a full study devoted solely to its ramifications. Therefore, the Committee chose the mental disease and defect defense definition essentially drawn from language propounded by the American Law Institute. Although the Committee realizes that all legal tests of sanity are subject to criticism by psychologists and psychiatrists, the Committee feels that, for statutory purposes, the ALI language will help in producing legal clarity.

The intoxication defense provided in this chapter (Section 12.1-04-02) is essentially the same as North Dakota law. Intoxication is only a defense if it negates a possible finding of the culpability required for commission of the defense.

The fourth chapter also provides for procedures to be followed if the defendant claims that he should not be tried because of his lack of capacity to understand the proceedings against him, or if he claims that he was suffering from a mental disease or defect at the time of commission of the offense. A defendant cannot use the mental disease or defect defense unless he gives written notice of his intention to do so prior to entering his plea of not guilty, or within 10 days thereafter.

After a defendant has filed such notice, or when there is doubt concerning his fitness to proceed to trial, the court may order him to undergo a psychiatric examination, and, if necessary, may order him committed to a suitable facility for not to exceed 30 days for such examination. If more time is needed, the court can continue his commitment for up to 30 additional days.

The findings and report of the examination shall be given to the court, and if the findings are contested, the court is to hold a hearing prior to making a decision on the issue of the defendant's sanity.

If it is determined that the defendant lacks fitness to proceed, the court is authorized to commit him to an institution for the reasonable period of time necessary to determine if there is a substantial probability that he will regain fitness to proceed in the future. However, the entire period of commitment is not to exceed the maximum period for which the offender could have been sentenced, and in no event is to exceed three years. If a defendant is acquitted on the ground of mental disease or defect, the prosecuting state's attorney is to file a petition with the appropriate county mental health board for a hearing on the defendant's mental capacity.

These provisions were drafted to replace Chapter 29-20, NDCC, and took into consideration the decision of the United States Supreme Court in **Jackson v. Indiana.** That case held essentially that a criminal defendant cannot be committed to a mental institution, pending trial, for an indefinite period of time, and if it is obvious that he will not regain fitness to assist in his own defense, the charges against him are to be dismissed and he is to be subject to the laws governing civil commitment for mental disease or defect.

The next chapter deals with justification or excuse, and delineates the scope of the defenses of "mistake of law", "duress", and "entrapment". A general justification is given for conduct of a public servant in the course of his official duties, when the conduct is required or authorized by law. In addition, a private person is justified in using force to effect the arrest of another or prevent his escape when a peace officer is not available and the person arrested or prevented from escaping has committed, in the presence of the person seeking justification, any crime which that person would be justified in using force to prevent.

Any person is justified in using force in self-defense against imminent unlawful bodily injury, sexual assault, or unlawful detention. However, if the force used is against a peace officer making an arrest which later turns out to be unlawful, such use of force will be unjustified. Further, if a person has entered into a mutual combat, his use of force is not justified unless he is resisting counterforce which is clearly excessive, or unless he has withdrawn from the encounter and has so indicated, but the other combatant continues to use force.

Force used in defense of others is justified if the person using it has not forfeited the right

of self-defense, and if the person being defended would be justified in defending himself. This provision comports with present North Dakota law (Subsection 3 of Section 12-26-03) which provides that force is not unlawful when committed by a person in aid or defense of a party about to be injured in person or property, if the force used is not more than sufficient to prevent the injury or offense.

Provision is made for justified use of force by parents, teachers, and other persons with custodial responsibilities towards minors. Again, this is essentially a restatement of current North Dakota law.

Force may also be used by persons responsible for the maintenance of order in a common carrier, or in a place where the public is assembled. A person may also use force to prevent another from committing suicide, or to rescue someone from serious bodily injury. Finally, force is justified if used by a physician to administer a recognized form of treatment, and the treatment is administered in an emergency, or with the consent of the patient, or his parent or guardian if he is a minor or incompetent, or when ordered by a court.

Force may be used in defense of property in instances where the person who it is used against is trespassing, or is unlawfully carrying away or damaging the property of another. However, the person using force must first request the other person to cease his conduct, unless that request would be useless or dangerous to make, or substantial damage would be done to the property before the request could be made.

Section 12.1-05-07 deals with situations where the use of "deadly force" is justified. Generally, a person is not justified in using more force than necessary and appropriate under the circumstances, but deadly force is justified in certain instances. For instance, deadly force is justified if used in self-defense where it is necessary to protect against death or serious bodily injury, or to prevent the commission of a violent felony. It can also be used in protection of another person, but the actor must first try to get that other person to retreat if he can safely do so. However, no one is required to retreat from his home or place of work, unless he was the original aggressor, or his assailant was a person who lived or worked with him.

Deadly force may also be used by a person in his home if it is necessary to prevent commission of arson, burglary, robbery, or another violent felony, and the use of other than deadly force would expose someone to substantial danger of serious bodily injury. Originally, the provision for use of force by a homeowner had contained additional language allowing use of such force in pursuing a person who had committed one of the listed felonies. However, the Committee did not believe that it should encourage homeowners and businessmen, who are not trained in law enforcement procedures, to chase fleeing felons outside of the physical limits of their home or place of business.

A peace officer may use deadly force to effect arrests or prevent escapes if the force is necessary, and the person against whom the force is used is committing or attempting to commit a felony involving violence, or is attempting to escape by use of a deadly weapon, or has otherwise indicated that he is likely to endanger life or limb unless apprehended without delay. This provision was the subject of much controversy in the Committee, as present North Dakota law allows the use of force, including deadly force as it would be defined in this bill, against a person who had committed "any felony".

Certain members of the Committee felt that the justified use of force by a peace officer in these situations should not be limited to "felonies involving violence", but should be stated in terms of the commission of any felony, as is the case under present law. However, the majority of the Committee felt that the new Code defined several felonies which did not involve the use of force by the alleged felon, and would not justify killing or seriously injuring the felon to prevent commission of the offense, or to prevent his escape.

Deadly force may be used by a person who is directed or authorized to do so by a public servant, if the person does not know, if such is the case, that the public servant himself is not authorized to use deadly force in that situation.

An affirmative defense of mistake of law is provided if a person acts in the good faith belief that his conduct does not constitute an offense, and his action was taken in reasonable reliance upon a statement of the law contained in:

1. A statute;
2. A judicial decision, order, or judgment;
3. An administrative order; or
4. An official interpretation of the law by a public servant or servants charged with such interpretation.

If a person engages in criminal conduct because he was compelled to do so by threat of imminent

death or serious bodily injury to himself or to another, those facts give rise to an affirmative defense to the crime charged. However, the defense is not available if the person voluntarily placed himself in a situation in which it was foreseeable that he would be subjected to duress. Present North Dakota law (Section 12-05-04) simply provides that if a person performs a criminal act under actual compulsion through the use of force or fear, he is exonerated.

Section 12.1-05-11 provides for the affirmative defense of entrapment, which is a defense not presently provided in the Century Code. However, North Dakota case law does seem to recognize the availability of the defense. **State v. Curry**, 13 N. D. 655 (1905). Entrapment occurs when a law enforcement agent induces commission of the offense by using persuasion or other means likely to cause a normally law-abiding person to commit the offense. If the law enforcement agent's conduct simply affords a person an opportunity to commit the offense, it does not constitute entrapment.

The next chapter defines the inchoate offenses denominated "criminal attempt", "criminal facilitation", "criminal solicitation", and "criminal conspiracy". The criminal attempt provisions are set forth at this point, and are not repeated elsewhere in the proposed Title 12.1. Thus, a great number of existing sections can be deleted, as those sections defined attempts to commit particular crimes, such as attempts to commit murder. Under the Code proposed by the Committee, all attempts to commit a crime would be prosecuted under one section defining criminal attempt.

Criminal attempt is graded for purposes of sentencing, as an offense of the same class as the offense attempted, except that an attempt to commit the highest grade of felony shall be classified as the next lower grade of felony, and attempts to commit the two lower grades of felony will be classified one grade lower if those attempts did not "come dangerously close to commission of the crime". A criminal attempt occurs if the person intentionally engages in conduct which is a substantial step toward commission of the crime, and otherwise acts with the kind of guilty intent required for commission of the crime.

The next section defines criminal facilitation, and provides that a person is guilty of that offense if he knowingly gives assistance to another person who is about to commit a felony, and that person commits the felony employing the assistance given.

If the goods or services provided by the actor were lawfully readily available to the other person, that fact can be considered in determining whether or not the actor's assistance was substantial. The general criminal facilitation definition does not provide for facilitation of a misdemeanor. However, there are several places in the proposed Code where facilitation of a misdemeanor is particularly provided for.

If a person commands, induces, or persuades another to commit a felony, the first person is guilty of criminal solicitation if the other person commits any overt act in response to the solicitation. It does not make any difference that the person solicited could not be guilty of the offense due to lack of responsibility or other incapacity. Criminal solicitation is graded as an offense of the class next below that of the offense solicited.

Criminal conspiracy is defined as an agreement with one or more persons to engage in or cause conduct which constitutes an offense if any one of the parties to the agreement does an overt act to effect an objective of the conspiracy. Conspiracy offenses are graded the same as criminal attempts.

The next chapter defines the offenses of treason and desecration of the United States flag. Both of these sections are revisions of current North Dakota law. However, the punishment for treason is reduced from the death penalty to the highest class of felony. It should be noted at this point that the Committee has made no provision for a death penalty, so the two present death penalties in Title 12 would be abolished. Those death penalties are for treason and for first-degree murder committed while under a sentence of life imprisonment for first-degree murder.

Treason is defined by reference to Section 19 of the Constitution, and is graded as a Class A felony, the highest class of felony. Desecration of the flag is graded as the highest class of misdemeanor, which provides for a potential maximum penalty higher than the current maximum penalty under Section 12-07-04.

Current North Dakota provisions prohibiting the display of red or black flags are deleted by a separate bill to be discussed later in this report. Desecration of a state flag is not made criminal in the proposed Code, nor is it criminal in present Title 12.

Chapter 12.1-08 defines offenses relating to physical obstruction of governmental functions. The offenses defined include preventing a public servant from affecting an arrest, or from discharging any other official duty. Another section pro-

hibits the intentional interference with or hindrance of another so as to prevent the discovery or apprehension of a criminal offender. Bail jumping is also prohibited, and another section deals with escapes from official detention.

This latter section would replace an entire chapter (12-16) of the present Title 12. Escape is graded as a Class B felony, the second highest grade of felony, if the escapee uses a weapon in effecting his escape. It is a Class C felony if he uses force, or was in official detention by virtue of being arrested for a felony, or by virtue of having been convicted of any offense. In all other cases, escape is graded as a Class A misdemeanor, the highest grade of misdemeanor.

A public servant who recklessly or negligently permits an escape is guilty of a misdemeanor. If he deliberately facilitates an escape, he would be guilty of criminal facilitation. A person who provides an inmate of a detention facility with any tool or other object which might be useful for escape is guilty of a Class C felony, as is the inmate who procures or otherwise provides himself with such a tool or other object.

Finally, a person is guilty of a Class C felony if he solicits or participates in the planning of a riot at a detention facility. This special riot provision is in addition to general riot prohibitions contained in later sections of the proposed Code. A special provision dealing with riots in prisons or other detention facilities does not presently exist in North Dakota law.

The next chapter prohibits conduct which obstructs judicial or other official proceedings. For instance, it is a Class C felony to use force, threat, deception, or bribery with intent to influence another's testimony in an official proceeding, or with intent to cause another to withhold testimony, to tamper with physical evidence, or to refuse to appear after receipt of a subpoena. Other sections make it a Class C felony to tamper with physical evidence, or to hinder or delay a person who is able to communicate information relating to a crime to a law enforcement officer.

Harassing a juror is made a Class A misdemeanor, and it is also a misdemeanor to communicate with a juror, other than as part of the proceedings in a case. If the offender directs his action against the spouse or other relative of the juror residing in the same household, the offender will be prosecuted as if he had aimed his conduct directly at the juror. It is also made a Class A misdemeanor to eavesdrop on jury deliberations. However, a person who is studying the jury process in the manner provided by statute, and under the control and supervision of the judge, has a defense to a charge of eavesdropping on jury deliberations. Present North Dakota law does not allow a person to study the jury process, but should it ever be provided, the defense will exist. The word "juror" is defined to include both grand and petit jurors.

The final section in this chapter makes it a Class A misdemeanor to attempt to influence the official action of a public servant for compensation, without disclosing to the public servant the fact of employment for compensation. The section does not apply to an attorney or other person authorized by law to act in a representative capacity with respect to official action, if he is acting in that capacity, and the public servant knows or should know it.

The first section of the next chapter defines criminal contempt, and limits the power of a court to punish for contempt: to situations where a person has conducted himself so as to obstruct the administration of justice, and the conduct occurred in the court's presence, or near thereto; to misbehavior of any of the officers of the court in their official transactions; or to disobedience or resistance to a lawful order of the court.

The FCC theory in regard to criminal contempt was to limit its applicability, and to provide that conduct usually punished as contempt will now be punished as a specific criminal offense. Thus, the remaining sections in this chapter define the crimes of failing to appear as a witness; failing to produce information or to be sworn; refusing to testify; hindering proceedings by disorderly conduct; and disobeying a judicial order.

The fact that a person has been summarily punished for contempt does not prevent a future prosecution for one of the specific "contempt" offenses. Such further prosecution will take place if the trial judge deems it necessary. The final section in this chapter provides that it is a Class A misdemeanor to solicit another to commit an offense which obstructs judicial or other official proceedings. This section is necessary, because the general criminal solicitation section only applies to the solicitation of felonies.

The next chapter (12.1-11) deals with perjury and other false statements. This chapter would replace Chapter 12-14 of present Title 12. Perjury is graded as a Class C felony and consists of the making of a false material statement under oath. If the statement made is false but is not material, or the prosecution feels that it would be difficult to prove that it was material, the person may be

charged with making false statements, a Class A misdemeanor.

If a person makes a false written statement, or otherwise creates a false impression in relation to a governmental matter, he is guilty of a Class A misdemeanor. If he makes a false report to a law enforcement officer with intent to implicate another in commission of an offense, or in a situation where the information reported would call for an emergency response, the offender is guilty of a Class A misdemeanor. Other sections in the chapter prohibit tampering with public records, and make such tampering a Class A misdemeanor; and make it a Class A misdemeanor for a public servant to knowingly refuse or neglect to perform his lawful duty.

The next chapter defines the offense of bribery of a public servant, a Class C felony. In addition, commercial bribery and sports bribery are also prohibited and graded as Class C felonies. Sports bribery is defined as deliberately preventing a publicly exhibited sporting contest from being held in accordance with the rules for that sport. If a participant in the sporting contest solicits or accepts a bribe, he is also guilty of a Class C felony.

Section 12.1-12-02 makes it a Class C felony for any person to violate the provisions of Section 40 or Section 81 of the State Constitution. Section 40 prohibits any legislator from offering or promising to give his vote in consideration that another legislator give or promise to give his vote for or against a different measure. Section 81 prohibits the Governor from promising his official influence in consideration that a member of the Legislature will give his vote for or against any particular matter. The Committee realized that these constitutional provisions were, for the most part, relatively unenforceable, but it felt that penalties equivalent to the present penalties should nevertheless be provided for a violation of either of those sections.

Other sections in the chapter prohibit trading in public office or the receipt of unlawful compensation for assistance in governmental matters. Threatening public servants is also prohibited if the threat was designed to influence the public servant to violate his duty. A person who threatens a public servant is guilty of a Class C felony.

A public servant is also prohibited from speculating or wagering on the basis of official action which he himself has taken, or which has been taken by a governmental agency with which he has been associated.

A public servant is also prohibited from having an interest in a sale, lease, or contract which he is authorized to make in his official capacity, either acting alone or in conjunction with other public servants. However, the public servant will not be guilty if the contract were between an officer of a political subdivision and that political subdivision where the goods or services contracted for were not otherwise obtainable at equal cost, and the other members of the governing body of the political subdivision unanimously approved the contract. In addition, sales, leases, or contracts entered into between school boards and school board members or school officers are also excepted from the provisions of this section. This section is a revision of Section 12-10-06 which provides essentially the same thing.

The final section of the chapter makes it a misdemeanor for a person to impersonate a public servant and to exercise the authority of that public servant, or to obtain a thing of value through the impersonation.

The next chapter deals with oppressive acts by persons who act or purport to act in an official capacity, and also covers other interference with civil rights. In addition, the chapter contains sections prohibiting interference with lawful elections, and safeguarding the election process. Finally, a section is included making it a Class B misdemeanor to injure or interfere with another because the other person is or has been exercising his right to use a public facility, or is attempting to exercise his right to use a public facility, if the injury or interference is based on the sex, race, color, religion, or national origin of the person injured or interfered with. This section (12.1-14-04) would replace the current law on this subject, Section 12-22-30.

The next chapter deals with criminal defamation, unlawful interception of communications, eavesdropping, and unlawful traffic in "bugging" devices. The criminal defamation provision caused controversy among Committee members, and a substantial body of opinion on the Committee was that the proposed Code should not contain provisions relating to criminal defamation. These members believed that a person who had been defamed should be left solely to his civil remedies. There was also a great deal of discussion concerning the constitutional limitations on the offense of criminal defamation, and the section was finally drawn in such a way that if the alleged defamatory material is true, the person charged has a complete defense.

The section which prohibited the manufacture,

assembly, possession, transportation, or sale of "bugging" devices in this State also caused controversy. However, the Committee thought it best to prohibit general sale or distribution of "bugging" devices. However, the section does not prohibit possession of such devices by public servants acting in the course of their official duties.

The next three chapters define the basic offenses of murder, manslaughter, assault, and kidnapping. Essentially these chapters do not make radical changes in current North Dakota law. The felony - murder rule is retained, but the misdemeanor - manslaughter rule is eliminated, and persons involved in auto accidents which result in death could no longer be prosecuted for manslaughter, but rather for negligent homicide.

The penalty for assault on a peace officer has been reduced from a felony to a Class A misdemeanor. The rationale behind this change was that few prosecutions were occurring under present law. Prosecutors were charging simple assault, rather than charging a person with a felony because he happened to have assaulted a peace officer. However, the Committee did believe that an assault on a peace officer should be graded as a higher misdemeanor than a simple assault. Thus, a person who assaults a peace officer will be subject to a one-year maximum sentence of imprisonment, while a person who engages in simple assault will be subject to a maximum sentence of 30 days' imprisonment.

Another section in the assault chapter prohibits deliberate harassment by telephone or in writing. If the offender communicates a threat to commit a violent felony, the offense is a Class A misdemeanor. In other cases, the offense is a Class B misdemeanor.

Other sections in the basic chapter defining kidnapping also define "felonious restraint" and "unlawful imprisonment". Felonious restraint is a Class C felony, and is a lesser offense than kidnapping, because the offender does not intend to hold the abducted person for ransom, or as a shield or hostage. Unlawful imprisonment, a Class A misdemeanor, consists of knowingly subjecting another to unlawful restraint, but a person is not guilty of the offense if he is a parent and the person restrained is his child.

Felonious restraint is classified as a Class C felony, while kidnapping is a Class A felony unless the offender voluntarily releases the victim alive and in a safe place prior to his trial, in which case the offense is classified as a Class B felony. The Class A felony grading for kidnapping is equivalent to current North Dakota law which provides a maximum punishment of 20 years' imprisonment.

The next chapter contains the current provisions relating to illegal abortion. No change has been made in current provisions except to substitute the penalty classifications used in the proposed Code for the current individual penalties contained in Chapter 12-25. The result of that change is that no current penalty has been lowered, and several current penalties contained in Chapter 12-25 would be raised.

Chapter 12.1-21 defines the offenses of arson, endangering by fire or explosion, failure to control or report a dangerous fire, release of destructive forces, and tampering with or damaging a public service. The proposed arson provisions are broader than the present North Dakota provisions in that arson is defined to include the causing of an explosion, while the present provisions are limited to "burning".

However, arson is limited by the proposed definition to the intentional destruction of the property of another, and does not include destruction of property belonging to the actor. Since most destruction of one's own property, if done with a criminal intent, is done to perpetuate an insurance fraud, the Committee believed that that type of action would be better covered under the general "theft by fraud" provisions. If, on the other hand, the offender intended to kill someone within the building destroyed, he could, of course, be prosecuted for murder.

The section dealing with release of destructive forces, i.e., causing a catastrophe is new law. It provides that a person is guilty of a Class C felony if he willfully creates the risk of a catastrophe or, after having done something which he knows is likely to cause a catastrophe, he willfully fails to take reasonable measures to prevent the catastrophe. If he, in fact, causes the catastrophe, he is guilty of a Class B felony.

A catastrophe is defined as the causing of serious bodily injury to 10 or more people, or substantial damage to 10 or more separate buildings or other structures, or the causing of damage in excess of $500,000. Of course, if anyone were killed as the result of a release of destructive forces, the perpetrator could be tried for murder.

The next chapter defines robbery, burglary, and related offenses. The robbery definition places emphasis on the infliction or risk of bodily injury, but does not otherwise make radical changes in current law. It is graded as a Class A felony if

the actor uses a gun or other dangerous weapon. It is a Class B felony if the actor possesses or pretends to possess a gun or other dangerous weapon, or menaces another with or inflicts serious bodily injury, or is aided by an accomplice present at the scene of the crime. In all other cases, robbery is a Class C felony. A prosecutor would no longer have to charge robbery of a particular degree, as the distinction in grading would be arrived at after the prosecutor had put in whatever proof of robbery he had.

Burglary is defined as the willful entry into a building or occupied structure when it is not open to public, and the actor is not entitled to be there. The definition also includes instances where the actor enters the building in a lawful manner but hides therein in order to remain after the building is closed. In any case, the entry or hiding must be done with intent to commit a crime in the building or structure.

Burglary is graded as a Class B felony if it is committed at night in a residential dwelling, or if the burglar inflicts or attempts to inflict bodily injury or physical restraint on another, or is armed and indicates an intent to inflict injury, or otherwise menaces another with imminent bodily injury. In all other cases, burglary is graded as a Class C felony.

The next chapter represents the most significant consolidation in the proposed Code. The chapter defines the crime of "theft", and is designed to consolidate the separate offenses presently known as larceny, stealing, purloining, embezzlement, obtaining money or property by false pretenses, extortion, blackmail, fraudulent conversion, receiving stolen property, misappropriation of public moneys, swindling, and any other offense in which the offender acquires the money or property of another through threat, stealth, or fraud. The basic theft offenses are defined in three sections which deal with theft of property, theft of services, and theft of property which was lost, mislaid, or delivered by mistake.

Theft is graded as a Class B felony if the property or services stolen exceed $10,000 in value, or are acquired or retained by any threat to commit a Class A or Class B felony or to inflict serious bodily injury on anyone. Theft is a Class C felony in the following instances:

1. If the property or services stolen exceed $100 in value.
2. If the property or services stolen are acquired or retained by threat and exceed $50 in value, or are acquired and retained by a public servant through use of a threat to take or withhold official action.
3. If the property or services stolen exceed $50 in value and are acquired or retained by a public servant in the course of his official duties.
4. If the property stolen consists of a firearm, ammunition, explosive, or destructive device, or consists of an automobile, aircraft, or other motor-propelled vehicle.
5. If the property consists of a government document stolen from a government office or from a public servant.
6. If the defendant is a fence, and receives or disposes of the property in the course of that business.
7. If the property consists of tools, plates, or anything uniquely associated with counterfeiting.
8. If the property stolen consists of livestock taken from the premises of the owner.
9. If the property stolen consists of a key or other device designed to provide access to property, the theft of which would be a felony, and the property was stolen to gain such access.

Otherwise, theft is graded as a Class A misdemeanor, unless the theft was of property or services of less than $50 in value, and was not committed by threat, the thief did not stand in a fiduciary relationship to the victim, and the thief was not a public servant, or officer or employee of a financial institution.

Other sections in this chapter define offenses relating to unauthorized use of a vehicle, misapplication of property received in trust, and defrauding secured creditors. The chapter also establishes some defenses to a charge of theft. For instance, if the victim is the alleged offender's spouse, the offender has a defense if the property involved constitutes household or personal effects, or other property normally accessible to both spouses, and the parties are living together.

The next chapter deals with forgery or counterfeiting, which terms are deemed synonymous, and with the making or uttering of slugs. The definition of "slug" is updated to include paper which may be used in a coin machine in an improper manner. Likewise the definition of "coin machine" is updated to include devices designed to receive paper money as well as coins.

The next chapter deals with riot and related offenses. A "riot" is defined as a public disturbance involving five or more persons which by its violence or tumultuousness creates grave danger or damage or injury to property or persons, or which substantially obstructs law enforcement or another government function. Present North Dakota law defines a riot as a gathering of six or more persons which threatens or uses force or violence. The Committee believed that any number of persons chosen was relatively arbitrary, but agreed to follow the choice of the drafters of the FCC and define a riotous group as consisting of five or more persons.

Inciting or directing a riot is graded as a Class A misdemeanor unless the riot involves 100 or more persons, in which case it is a Class C felony. It is also a Class C felony to supply weapons for use in a riot, or to teach another to use a weapon with intent that it be used in a riot, or to be armed with a weapon while engaged in a riot. A person who simply engages in a riot is guilty of a Class B misdemeanor, as is a person who disobeys a reasonable public safety order during the course of a riot.

The next chapter covers the supplying of weapons and ammunition to be used by a person who intends to commit a crime of violence with the weapons or ammunition supplied. The chapter also covers the knowing supplying of a firearm or other weapon or ammunition to a person who is prohibited by current North Dakota regulatory law from receiving it. Other sections of this chapter deal with illegal trafficking in "limited-use" firearms in violation of current North Dakota regulatory law contained in Chapter 62-02, and prohibit the possession of explosives in governmental buildings. Although the sections dealing with prohibitions against providing firearms to criminals, or dealing illegally in limited-use firearms, will stand alone, the Committee recognizes that an in-depth study of the provisions of Title 62 should be made during the next interim, in conjunction with the continuing study of criminal offense definitions outside of Title 12.

The next chapter (12.1-27) deals with the dissemination of obscene material to adults and to minors. Dissemination to an adult is a Class A misdemeanor, but is a Class C felony to disseminate to a minor. This chapter would replace the current North Dakota law relating to dealing in obscene matter which the Committee believes to be unconstitutional on its face. A final section in this chapter defines the offense of indecent exposure, and grades it as a Class A misdemeanor.

The next chapter defines offenses relating to gambling, or the operation of lotteries. There was a substantial body of opinion on the Committee that gambling should not be a criminal offense, but the Committee recognized that, under Article 1 of the amendments to the Constitution, the Committee had a mandate to prohibit operation of lotteries. That being the case, the Committee believed it best to also continue present prohibitions against gambling, and operating of gambling houses.

Simple gambling is graded as a Class B misdemeanor, while selling or purchasing lottery tickets, or disseminating information about a lottery is a Class A misdemeanor. If a person maintains a gambling house or engages in the business of gambling, he is guilty of a Class C felony. The latter provisions, of course, are aimed at professional gamblers, or at gambling operations which might tend to be controlled by a criminal syndicate.

Chapter 12.1-29 deals with prostitution and the related offenses of promoting prostitution or facilitating prostitution. Simply engaging in prostitution is a Class B misdemeanor. However, operating a house of prostitution, or procuring a prostitute for a house of prostitution is a Class C felony. Likewise, forcing a person to remain a prostitute, or inducing a person under 16 years of age to be a prostitute is a Class C felony.

If the offender is the prostitute's spouse, a special provision in this chapter allows the prostitute-spouse to testify against the offender-spouse in cases involving a charge related to prostitution. This provision overrides the general privilege prohibiting testimony of one spouse against another.

The next chapter is a revision of the current prohibitions against Sunday business or labor. The substance of the current provisions are retained, but the punishment classification (a Class B misdemeanor) is changed to accord with the offense classification being proposed by the Committee.

The next chapter defines miscellaneous offenses, and includes definitions of disorderly conduct, and criminal usury. Disorderly conduct, a Class B misdemeanor, is the intentional harassing or alarming of another by fighting, making unreasonable noise, using obscene language or gestures in a public place, obstructing traffic or the use of a public facility, loitering for the purpose of soliciting sexual contact, creating a hazardous, physically offensive condition by an act which serves no legitimate purpose, or persistently following a person in or about a public place.

As originally drafted, the disorderly conduct section had contained a provision that no one could be prosecuted for disorderly conduct involving: use of abusive or obscene language; persistent following of another in a public place; or loitering for the purpose of soliciting sexual contact, unless the law enforcement officer making the arrest had received a complaint from another person who was not himself a law enforcement officer. Although a substantial body of opinion on the Committee favored retention of that provision, the majority did not believe it desirable.

The other section in this chapter prohibits the operation of a criminal usury business, or loan-sharking. Loan-sharking is graded as a Class C felony.

SENTENCING

The last two chapters of the main revision bill contain the Committee's proposals in relation to sentencing, and the status of convicted persons. The Committee finally chose to follow the offense classification formula used by the drafters of the FCC; however, a provision for an offense category known as "infraction" was dropped. Thus, the Committee's offense classification is broken into five classes: three classes of felony, and two classes of misdemeanor.

The maximum imprisonment or fine which can be imposed for each of those classifications is as follows:

1. Class A felony — a maximum penalty of 20 years' imprisonment, $10,000 fine, or both.
2. Class B felony — a maximum penalty of 10 year's imprisonment, $5,000 fine, or both.
3. Class C felony — a maximum penalty of 5 year's imprisonment $5,000 fine, or both.
4. Class A misdemeanor — a maximum penalty of one year imprisonment, $1,000 fine, or both.
5. Class B misdemeanor — a maximum penalty of 30 days' imprisonment, $500 fine, or both.

Provision is also made for extended sentences after a finding that the offender is dangerous, a professional criminal, or a persistent offender. The extended sentence range permits a doubling of the maximum sentence of imprisonment for Class B and Class C felonies, and, in the case of a Class A felony, permits a sentence up to life imprisonment.

In imposing a sentence, the court is allowed to use one or a combination of the following alternatives:

1. Deferred imposition of sentence.
2. Probation.
3. A term of imprisonment, including intermittent imprisonment.
4. A fine.
5. An order that the defendant make restitution for damages resulting from the crime.
6. An order that the defendant restore damaged property, or perform another appropriate work detail.
7. An order committing the defendant to an appropriate public or private institution for treatment of alcoholism, drug addiction, or mental disease or defect.

In addition, the judge is given authority to unconditionally discharge an offender if he deems that course of action best.

All of these sentencing alternatives now seem to be within the jurisdiction of North Dakota courts. However, there is no specific statutory statement allowing provision for restitution of damages, restoration of damaged property, or assignment to appropriate work details. Therefore, the Committee was led to believe that many judges will not use those alternatives. It is the Committee's belief that the alternatives will receive more usage if they are stated specifically in a statute.

A special sanction is provided for "organizations" whereby the court may require the organization to give notice of its conviction to the persons or class of persons who were harmed by the offense committed by the corporation. For instance, if the offense involved a criminal violation of consumer protection legislation, the offender, after conviction, could be required to give notice by mail or by advertising to all persons who may have been harmed by its illegal consumer-related activities.

The sentencing portion of the Code contains extensive provisions setting out criteria to be used in making the sentencing decision, and also sets forth the conditions which may be imposed if the offender is sentenced to probation, or if another sentence is suspended and he is placed on probation.

If the court wishes to impose restitution or reparation, it must make specific findings required in another section of the chapter. The

findings will relate to the amount of damage sustained by the victim or victims of the crime, but those damages will be limited to fruits of the crime or expenses actually incurred as a direct result of the defendant's criminal act. In addition, before imposing restitution, the court shall determine the ability of the defendant to restore the fruits of the criminal action or to pay monetary reparations. Finally, the court will make a determination as to whether restitution or reparation will serve a valid rehabilitational purpose in relation to that particular defendant.

The same section provides that the court can order the defendant to perform reasonable assigned work as a condition of probation. The assigned work need not be related to the crime, but cannot be solely for the benefit of a private individual other than the victim. For instance, a person arrested for illegal possession of an intoxicating beverage might be assigned to pick up litter along a certain section of road. However, he could not be assigned to pick up litter on a particular person's farm.

Another section establishes the criteria to be followed in imposing a sentence to pay a fine. The court is to determine whether the defendant can pay the fine without undue hardship, and whether a sentence to pay a fine will interfere with the defendant's capacity to make restitution.

The court may allow the defendant to pay a fine in installments. The court may not impose an alternative sentence of imprisonment if the fine is not paid. If, in fact, the fine, or any installment, is not paid, the court may issue an order to show cause why the defendant should not be imprisoned for nonpayment. If the defendant does not provide a good excuse for his default, the court may sentence him for failure to pay the fine as follows: if he was convicted of a misdemeanor, to a period not to exceed 30 days; or if he was convicted of a misdemeanor, to a period not to exceed 30 days; or if he was convicted of a felony, to a period not to exceed six months.

If an offender is sentenced to a term of imprisonment for a felony, or a Class A misdemeanor, he is subject to a mandatory parole component which must be served if he serves the whole term of imprisonment. The mandatory parole components are five years for a sentence ranging from 15 years to life; three years for a sentence ranging from three to 15 years; and one year for a sentence ranging from one year to one day less than three years.

The rationale behind this provision is to ensure that those persons who most need a period of parole, because they were not rehabilitated during their term of imprisonment, will serve a period of parole after imprisonment. During consideration of this section, there was a body of opinion on the Committee which felt that this section violated constitutional provisions for equal protection of the laws. Those members would have provided for a mandatory parole component which would have been served regardless of when a person was released from a term of imprisonment.

The Code also deals with the situation where sentences are imposed for two or more offenses arising from a single criminal episode, or where sentences are imposed for two or more offenses not arising from a single criminal episode. In the first case, the Code mandates that the sentences are to run concurrently, and states that they shall run concurrently in the second case, unless the court specifically orders otherwise.

If the court orders multiple sentences to run consecutively, the aggregate total term of imprisonment which the offender must serve cannot exceed the maximum term allowable under the extended sentence provisions for the highest classification of offense for which the defendant was sentenced. Thus, if an offender was sentenced for a Class B felony and two Class C felonies, the maximum aggregate total term of imprisonment which he would have to serve could not exceed 20 years.

If an offense is defined outside of the present Title 12 without specification of punishment, it shall be punished as a Class C felony if it is declared to be a felony, or a Class A misdemeanor if it is declared to be a misdemeanor.

If a person is sentenced to imprisonment following conviction of a felony, he loses his right to vote, and his right to become a candidate or hold public office. In addition, any public office, other than one subject to impeachment, held at the time of sentence is forfeited. Upon release from imprisonment, the offender is to be given a certificate of discharge which will state that his right to vote and to hold future public office are restored. This latter provision differs from current North Dakota law, because currently the released person must take affirmative action to have his rights restored.

ADDITIONAL ALTERNATIVE BILLS

The Committee is recommending six bills in addition to the main revision bill. Two of these bills deal with the selling to or use of tobacco by

minors, and with the question of whether home rule cities have the power to supersede state criminal laws within their territorial jurisdictions. One bill deals with certain sections to be specifically repealed, and the remaining three bills encompass alternative provisions relating to sexual offenses. All of the bills described in this portion represent issues which caused controversy of the Committee, or which the Committee felt should be brought specifically to the attention of the Legislature.

The Committee recommends a bill to create a new section of law prohibiting the sale to or use by minors of tobacco in any form. The section created is numbered in such a way that it would fit into the main revision bill, and the bill has a July 1, 1975, effective date.

The Committee was not convinced that a child who smokes should be subject to criminal penalties, or acquire a criminal record. There was also a body of opinion on the Committee which felt that only those who sell tobacco to minors should be subject to criminal penalties, but that no penalties should be provided for use of tobacco by children. The Committee also recognized that statutes prohibiting use of tobacco were relatively unforceable. Therefore, the Committee is presenting the bill in order that the Legislature can make the final policy decisions.

During the course of its study, a Committee member noted that a city attorney of a home rule city had ruled that ordinances of that city could supersede the state criminal law relating to Sunday business or labor. After discussion of this report, it was the consensus of the Committee that state criminal laws should operate throughout the State, and should not be superseded by home rule charters or ordinances. However, it was not legally clear whether home rule charters or ordinances could supersede state criminal laws, although it seemed that the intent of the Legislature, in passing the home rule authorizing legislation, was not to authorize the supercession of state criminal laws.

In order to bring the question squarely before the Legislature, the Committee is recommending a bill which creates a section stating that the criminal laws of the State shall have full force and effect in home rule cities. The Committee did not have time to study fully the ramifications of this bill, especially as regards the need to ensure the full force and effect of other state laws. Thus, the Committee hopes that it can be studied during the Session, or during the interim between the passage of the bill and its effective date, which is set at July 1, 1975.

Three bills recommended by the Committee present alternative versions of sexual offense definitions. A graph illustrating the basic differences between the three versions is attached to this report as Appendix "A". Although the entire Committee agreed that the present sexual offense definitions were awkward or outdated, the Committee was unable to agree on a single revision of sexual offense definitions. Therefore, the Committee submits the three alternative bills, each of which creates Chapter 12.1-20, and repeals the current provisions in Title 12 relating to sexual offense definitions. When the Legislature chooses one of the three alternatives, the other two should be indefinitely postponed, as there would be a basic conflict if more than one of the bills passed. If none of the three alternatives pass, the current law defining sexual offenses will be retained in force. All three of the sexual offense definition revision bills have a July 1, 1975, effective date, in order that the one passed will take effect at the same time as the main revision bill. The principal differences between the three alternative bills will be summarized in the subsequent paragraphs.

Alternative No. 1 retains the classic definition of rape, which is forced sexual intercourse when the victim is a woman. In addition, Alternative No. 1 defines aggravated involuntary sodomy which is an offense of the same seriousness as rape. Alternatives Nos. 2 and 3, on the other hand, define a new offense to be known as "gross sexual imposition" which includes the classic act of rape and any other forced sexual act.

Alternatives Nos. 1 and 3 provide that it is an offense for an adult to perform a sexual act with a minor. However, the offense is graded as a Class C felony in Alternative No. 1, while it is a Class A misdemeanor in Alternative No. 3. Alternative No. 2, on the other hand, provides that an adult who engages in a sexual act with a minor is only guilty of an offense (a Class A misdemeanor) if he or she is at least three years older than the "victim".

Alternatives Nos. 2 and 3 prohibit the performance of sexual acts in a public place, whereas Alternative No. 1 prohibits the performance of sexual intercourse between consenting adults who are unmarried regardless of where the act takes place. Alternative No. 1 makes the offense a Class B misdemeanor, while Alternatives Nos. 2 and 3 make it a Class A misdemeanor. In addition, Alternative No. 3 prohibits consenting minors from engaging in a sexual act.

All three alternatives define the offense of "deviate sexual act" which includes bestiality and

necrophilia. The offense is graded as a Class A misdemeanor by all three alternatives.

All of the alternatives provide that a sexual act performed on a person below 15 years of age, with or without consent, is a Class A felony. These provisions equate with the present statutory rape provisions, but would now be extended to cover all sexual acts.

Alternative No. 1 prohibits homosexual activity between consenting adults, and makes it a Class A misdemeanor. Alternatives Nos. 2 and 3 do not prohibit such activity unless it is performed in a public place.

All three alternatives prohibit bigamy and incest, but only Alternatives Nos. 1 and 3 prohibit adultery. All three alternatives also prohibit unlawful cohabitation, but Alternative No. 1 makes It a Class A misdemeanor, while Alternatives Nos. 2 and 3 make it a Class B misdemeanor.

A general overview would reveal that Alternative No. 1 most closely resembles current North Dakota law, with Alternative No. 2 bearing the least resemblance to the total number of sexual offense definitions in current North Dakota law. Because of the differences among Committee members as to which alternative is the most desirable, the Committee submits all three without recommendation.

The Committee is also recommending a sixth bill which provides for separate repeal of sections in Title 12 which were created through adoption of an initiated measure. These sections deal with the display of red or black flags, and prohibit the carrying of any flag other than that of the United States, a state, or a friendly foreign nation in a parade. This bill will require a two-thirds vote in both Houses for passage.

SUMMARY

In summary, the Committee believes that it has presented a workable Code revision, which is a great improvement over the current criminal offense definitions and provisions for sentencing contained in Title 12. However, the Committee realizes that there is much work to be done on the criminal offense definitions contained elsewhere in the Century Code. Therefore, the Committee hopes that the continuing study resolution will pass.

In addition, because none of the Committee's recommendations for statutory change would take effect until July 1, 1975, the Committee hopes that the study committee serving during the next interim will also act as a forum for receipt of comments or criticisms on the new Code. If that study committee feels the criticism is justified, it can, of course, take action to propose amendments to the new Code.

COMPARISON OF SEXUAL OFFENSE ALTERNATIVES

ALTERNATIVE No. 1	ALTERNATIVE No. 2	ALTERNATIVE No. 3
12.1-20-01. GENERAL PROVISIONS.) Same	12.1-20-01. GENERAL PROVISIONS.) Same	12.1-20-01. GENERAL PROVISIONS.) Same
12.1-20-02. DEFINITIONS.) 1. Defines "sexual intercourse" 2. Defines "deviate sexual intercourse" to include sodomy, fellatio, or cunnilingus 3. Defines "sexual contact" 4. Defines "deviate sexual act" as necrophilia or bestiality	12.1-20-02. DEFINITIONS.) 1. Defines "sexual act" to include sexual intercourse, sodomy, fellatio, and cunnilingus 2. Same as No. 3 in Alt. 1 3. Same as No. 4 in Alt. 1	12.1-20-02. DEFINITIONS.) 1. Same as Alt. 2 2. Same as No. 3 in Alt. 1 3. Same as No. 3 in Alt. 1
12.1-20-03. RAPE.) Sexual intercourse with female as victim, male as offender. Class A felony if victim injured, or is under age 15, or is not a voluntary companion and has not previously permitted "sexual liberties". A Class B felony otherwise	12.1-20-03. GROSS SEXUAL IMPOSITION.) Forced "sexual act". Male or female victim. Class A felony if victim is: injured; under age 15; or not a voluntary companion of offender and has not previously permitted him or her "sexual liberties". A Class B felony otherwise	12.1-20-03. GROSS SEXUAL IMPOSITION.) Same as Alt. 2
12.1-20-04. GROSS SEXUAL IMPOSITION.) Sexual intercourse compelled by threat — female as victim. Class C felony	12.1-20-04. SEXUAL IMPOSITION.) "Sexual act" compelled by threat. Either sex as victim. Class C felony	12.1-20-04. SEXUAL IMPOSITION.) Same as Alt. 2
12.1-20-05. AGGRAVATED INVOLUNTARY SODOMY.) Deviate sexual intercourse with either sex as victim. Class A felony if victim is: injured; under age 15; or not a voluntary companion and has not previously permitted "sexual liberties". A Class B felony otherwise	12.1-20-05. CORRUPTION OF MINORS.) Adult guilty for engaging in "sexual act" with minor or causing minor to engage in "sexual act" if adult is at least 3 yrs. older than minor. Class A misdemeanor. (See 12.1-20-08 in Alt. 1)	12.1-20-05. CORRUPTION OF MINORS.) Adult guilty for engaging in "sexual act" with minor; or causing minor to engage in sexual act. Class A misdemeanor
12.1-20-06. INVOLUNTARY SODOMY.) Deviate sexual intercourse with mental defective, or compelled by threat. Class C felony	12.1-20-06. SEXUAL ABUSE OF WARDS.) "Sexual act" where victim (of either sex) is in custody of offender. Class A misdemeanor (See 12.1-20-09 in Alt. 1)	12.1-20-06. SEXUAL ABUSE OF WARDS.) Same as Alt. 2
12.1-20-07. SODOMY.) Deviate sexual intercourse with consenting adult. Class A misdemeanor	12.1-20-07. SEXUAL ASSAULT.) Offensive "sexual contact". Class B misdemeanor (See 12.1-20-10 in Alt. 1)	12.1-20-07. SEXUAL ASSAULT.) Same as Alt. 2

COMPARISON OF SEXUAL OFFENSE ALTERNATIVES — (Continued)

ALTERNATIVE No. 1	ALTERNATIVE No. 2	ALTERNATIVE No. 3
12.1-20-08. CORRUPTION OF MINORS.) Adult engaging in sexual intercourse with a minor, or causing minor to engage in deviate sexual intercourse. Class C felony	12.1-20-08. FORNICATION.) Engaging in "sexual act" in a public place. Class A misdemeanor. (See 12.1-20-11 in Alt. 1)	12.1-20-08. FORNICATION.) Engaging in "sexual act" in public place. Class A misdemeanor. Minor engaging in sexual act. Class B misdemeanor. (See 12.1-20-11 in Alt. 1)
12.1-20-09. SEXUAL ABUSE OF WARDS.) Engaging in sexual intercourse or deviate sexual intercourse with ward, or causing ward to engage in deviate sexual intercourse. Class C felony (See 12.1-20-06 in Alt. 2 and Alt. 3)	12.1-20-09. UNLAWFUL COHABITATION.) Living openly and notoriously as married couple when not married. Class B misdemeanor (See 12.1-20-13 in Alt. 1 and 12.1-20-10 in Alt. 3)	12.1-20-09. ADULTERY.) Married person engaging in sexual act with another not his spouse. Class A misdemeanor. (Not provided for in Alt. 2, see 12.1-20-12 in Alt. 1)
12.1-20-10. SEXUAL ASSAULT.) Offensive "sexual contact". Class B misdemeanor (See 12.1-20-07 in Alt. 2 and Alt. 3)	12.1-20-10. INCEST.) Marrying or engaging in sexual intercourse with blood relation. Class C felony (See 12.1-20-14 in Alt. 1 and 12.1-20-11 in Alt. 3)	12.1-20-10. UNLAWFUL COHABITATION.) Living openly and notoriously as married couple when not married. Class B misdemeanor (See 12.1-20-13 in Alt. 1 and 12.1-20-09 in Alt. 2)
12.1-20-11. FORNICATION.) Engaging in sexual intercourse with another not actor's spouse. Class B misdemeanor (See 12.1-20-08 in Alt. 2 and Alt. 3)	12.1-20-11. DEVIATE SEXUAL ACT.) Intercourse with animals or dead persons. Class A misdemeanor (See 12.1-20-15 in Alt. 1 and 12.1-20-12 in Alt. 3)	12.1-20-11. INCEST.) Marrying or engaging in sexual intercourse with blood relation. Class C felony (See 12.1-20-14 in Alt. 1 and 12.1-20-10 in Alt. 2)
12.1-20-12. ADULTERY.) Married person engaging in sexual intercourse or deviate sexual intercourse with another not his spouse. Class A misdemeanor (See 12.1-20-09 in Alt. 3. Not defined in Alt. 2)	12.1-20-12. BIGAMY.) Marrying another while still married. Class C felony (See 12.1-20-16 in Alt. 1 and 12.1-20-13 in Alt. 3)	12.1-20-12. DEVIATE SEXUAL ACT.) Intercourse with animals or dead persons. Class A misdemeanor (See 12.1-20-15 in Alt. 1 and 12.1-20-11 in Alt. 2)
12.1-20-13. UNLAWFUL COHABITATION.) Living openly and notoriously as married couple when not married. Class A misdemeanor (See 12.1-20-09 in Alt. 2 and 12.1-20-10 in Alt. 3)	No Section Number	12.1-20-13. BIGAMY.) Marrying another while still married. Class C felony (See 12.1-20-16 in Alt. 1 and 12.1-20-12 in Alt. 2)

COMPARISON OF SEXUAL OFFENSE ALTERNATIVES — (Continued)

ALTERNATIVE No. 1	ALTERNATIVE No. 2	ALTERNATIVE No. 3
12.1-20-14. INCEST.) Marrying or engaging in sexual intercourse with blood relation. Class C felony (See 12.1-20-10 in Alt. 2 and 12.1-20-11 in Alt. 3)	No Section Number	No Section Number
12.1-20-15. DEVIATE SEXUAL ACT.) Intercourse with animals or dead persons. Class A misdemeanor (See 12.1-20-11 in Alt. 2 and 12.1-20-12 in Alt. 3)	No Section Number	No Section Number
12.1-20-16. BIGAMY.) Marrying another while still married. Class C felony (See 12.1-20-12 in Alt. 2 and 12.1-20-13 in Alt. 3)	No Section Number	No Section Number

LEGISLATIVE PROCEDURE AND ARRANGEMENTS

The Legislative Council is directed by Section 54-35-11 of the North Dakota Century Code to make all necessary arrangements, except for employment of legislative employees, to facilitate the proper convening and operation of the Legislative Assembly. This responsibility, along with the responsibility of studying and recommending any necessary changes in legislative procedures was assigned to the Committee on Legislative Procedure and Arrangements, consisting of Representatives S. F. Hoffner, Chairman; Howard F. Bier, Bryce Streibel, Earl S. Strinden, and Francis E. Weber; and Senators L. D. Christensen, C. Warner Litten, George Rait, and I. J. Wilhite.

The report of the Committee was submitted to the Legislative Council at the biennial meeting of the Council held at Camp Grafton. The report and recommended legislation were adopted for submission to the Forty-third Legislative Assembly by the Legislative Council in November 1972.

INTRODUCTION

Once again, the Committee's activities and recommendations cover almost the entire spectrum of legislative affairs. The Committee is recommending numerous amendments to the Legislative Rules of both Houses, and the Joint Legislative Rules, including a Rule providing for open legislative meetings and an amendment which would cause committee reports for indefinite postponement to be finally heard one legislative day after the committee report was presented. The Committee also has given serious consideration to the legislative space situation, and has approved the remodeling of Rooms G-10 and G-11 for use as a legislative conference and phone room.

In accordance with the requirements of law, the Committee has also prepared an agenda for the December Organizational Session, scheduled for December 5-7, 1972. The Committee has taken into consideration the fact that the court-ordered legislative redistricting will require the apportionment of the new legislators among the various standing committees, and is proposing a Rules amendment to change the membership of certain committees. The Committee is also proposing changes in the format of the daily calendar of bills, so as to provide a brief synopsis of each bill on second reading and final passage, and to indicate, on the calendar, the standing committee to which that bill had been referred. The Committee took numerous other actions which will be discussed in the text of the report.

LEGISLATIVE SPACE FACILITIES

The Committee noted and approved the remodeling of Rooms G-10 and G-11 for use as a legislative conference and phone room. The Committee believed this to be a higher use of that space, and that the remodeling would certainly provide a much-needed legislative facility. However, the Committee was aware of problems which will arise in replacing that space for other legislative purposes. Therefore, the Committee has directed the Legislative Council staff to take necessary steps to secure appropriate and adequate space for the Legislature during the next Session. Arrangements have already been made to secure two rooms in the State Highway Building, which will be of adequate size to serve as standing committee meeting rooms. In addition, the Attorney General's office has agreed to again provide the licensing office space for use during the Legislative Session.

The Committee also considered the possibility of a future use of the Maintenance Building, located northeast of the State Capitol, for housing of other agencies than are currently housed therein, so as to solve some of the space needs in the State Capitol. The Committee directed that a formal request be issued to the Capitol Grounds Planning Commission asking that the Commission look into the feasibility and desirability of using the Maintenance Building for some higher use than it is presently being utilized for. One of the suggestions brought out during Committee discussion was that the Maintenance Building could possibly be remodeled for use as a Computer Center or a Supreme Court building.

Earlier in the biennium, the Committee heard testimony from the Director of Institutions concerning his negotiation with vendors for the replacement of the electric roll call machines in both the House and Senate Chambers. The Director of Institutions had budgeted for that replacement, and the budgeted amount was approved during the 1971 Session. The Director of Institutions, with the approval of the Committee, chose to contract with International Roll Call Corporation for the new system. The Director of Institutions had received bids from three companies which make and install

roll call systems. The newly installed system in the House Chamber was used for the first time by the Constitutional Convention.

The Committee also approved a proposal from Audio Systems, Inc., for the upgrading of the audio system in the House Chamber. The upgrading will consist of installation of two types of equalization filters, and installation of new columnar speakers. In addition, the contact surfaces of the floor microphones will be electroplated with rhodium in order to prevent rapid wear of those contacts. The Committee also discussed the desirability of upgrading the Senate audio-system, but it was felt that the Senate system was not in as serious need of improvement, since it was much newer than the House system.

Early in the biennium, the Chairman of the Legislative Council directed the staff to purchase an electronic air filter for use in Committee Room G-2, which is the main committee room used by interim Legislative Council committees. Reaction to that filter has generally been good, and the Committee believed that it would be desirable to have such filters mounted in as many legislative standing committee rooms as possible. Therefore, the Committee has directed the staff to negotiate the purchase of four more electronic air filters for placement in four heavily used legislative committee rooms. These filters are designed to remove cigar and cigarette smoke and dust particles from the air, and should result in a vast improvement in the atmosphere of legislative committee rooms.

In order to help upgrade the communications between legislators and their constituents, the Committee, following a recommendation based on visitations to other state legislatures, has directed that an incoming WATS line be installed during the Legislative Session. This WATS line would be available to any resident of the State of North Dakota, and would allow that resident to call to the information desk located in Memorial Hallway. Thus, a constituent could call concerning the status of a bill, the time of a committee hearing, or could call to give a message (or in certain situations to talk) to his legislator. The Committee believes that the incoming WATS line will give many citizens a feeling that their Legislature is indeed accessible, and that their opinions (and grievances) can be made known directly.

Finally, the Committee authorized the staff of the Legislative Council to purchase wooden furniture to permanently furnish the offices of the four floor leaders and the Speaker of the House. The staff had pointed out that the purchase of wooden furniture violated the policies of the Department of Accounts and Purchases, and that previously the Legislature had leased wooden furniture for the leadership offices, thus necessitating the sale of that furniture by the Department of Accounts and Purchases after the Session. This caused the Department to have difficulty in maintaining its policy against wooden furniture, so the Committee decided to furnish those offices with wooden furniture on a permanent basis, thus obviating the necessity for resale of wooden furniture after each Legislative Session.

LEGISLATIVE RULES AMENDMENTS

The Committee has considered and is recommending numerous Rules amendments dealing with a wide variety of legislative procedures or arrangements. Following-up on the interest during the Constitutional Convention in open legislative meetings, the Committee is recommending a Joint Legislative Rule providing that all meetings of the Legislature, and its standing or interim committees be open to the public at all times when pending or proposed legislation is being considered.

In addition to noting the fact that the Constitutional Convention had recommended a similar provision, the Committee also heard citizen testimony favoring such a legislative Rule. This Rule, if adopted, would prohibit the so-called committee executive session, but would still permit the Senate to go into executive session to consider gubernatorial nominations. It would also allow "legislative investigating committees" to operate under current law which permits those committees to close their sessions if the reputation of someone appearing before the committee might be injured by an open meeting. However, whenever a committee was meeting and the testimony being received, or the documents being presented, could reasonably be believed to lead to the proposal of legislation, then the committee meeting should be open to the public and the press.

The Committee considered at length the problem of spacing the introduction of bills during the early days of the Session so that there would not be a huge number of bills introduced on the fifteenth legislative day (the deadline for introduction). The Committee determined that a substantial number of bills introduced late in the bill introduction period came from executive departments and agencies. In order to provide impetus for executive departments and agencies to pre-file their bills with the Legislative Council, the Committee recommends a Joint Legislative Rule which

would move the deadline for introduction of executive agency bills from the fifteenth legislative day to the fifth legislative day.

In order to make compliance with that deadline as palatable as possible, the Joint Rule goes on to provide that when the bill is pre-filed with the Legislative Council staff, the bill will be deemed introduced by the standing committee of the House or Senate, at the option of the agency, which has general subject-matter jurisdiction of bills of that nature. Thus, in effect, the Legislature would be extending the courtesy of introduction to all executive branch agencies similar in form to the courtesy extended by the Appropriations Committees in introducing the bills comprising the Governor's budget. Creation of the Joint Rule also necessitated amendments in Senate Rule No. 29 and House Rule No. 30 to insert equivalent executive department bill deadlines.

The Committee received a suggestion from a legislator concerning delaying final consideration of committee reports recommending indefinite postponement. The rationale for this suggestion was two-fold: first, if the Legislature has been put to the expense of drafting and printing a bill, it deserves more floor consideration than a few minutes given to adoption of a committee report; and second, because all the members on the floor may not have had time to determine the content and impact of bills which are recommended for indefinite postponement.

With this in mind, the Committee is recommending amendments to Senate Rule No. 46 and House Rule No. 47 to provide that committee reports for indefinite postponement will automatically be laid over for consideration on the next legislative day. They will be considered on the Sixth Order of Business in much the same manner as amendments are presently considered, and the Senate and House Rules setting forth the Orders of Business will be amended to make corresponding notations that the Sixth Order of Business includes not only consideration of amendments, but also consideration of committee reports for indefinite postponement.

In light of the court-ordered redistricting increasing the membership of the Legislature from 147 to 153 members, the Committee considered the necessity for changing the membership totals for the standing committees of the Senate and House in order to assign slots to the new members.

During its consideration, the Committee had before it a staff memorandum on legislative statistics, including statistics relevant to standing committee workloads. A copy of that memorandum is attached to this report as Appendix "A".

To solve the problem of assignment of the additional members, the Committee recommends amendments to Senate Rule No. 39 and House Rule No. 40. In the Senate, the two additional Senators would be assigned to the Committees on Education and Industry and Business; and the Committees on Political Subdivisions and Transportation. Because each member, except the members of the Appropriations Committee and the Majority Floor Leader must serve on two committees, it was necessary to raise the membership of two of the three-day committees, and two of the two-day committees.

In the House, one additional member would be assigned to the following three-day committees: Education; Industry, Business and Labor; Finance and Taxation; and State and Federal Government. The two-day committees recommended to receive one additional member are: Natural Resources; Political Subdivisions; Social Welfare; and Transportation.

Senate Rule No. 39 has also been amended to provide that 50 percent of the membership of a committee with an even number of members will constitute a quorum. This amendment was felt necessary since there are times when it is difficult to get a quorum of the Senate standing committees, other than the Committee on Appropriations, due to their small membership. It is often necessary for several members of a Senate standing committee to be absent, due to the fact that they are making an appearance before another standing committee of either the Senate or the House.

During consideration of the necessary changes in the membership of some of the Senate standing committees, the Committee considered a recommendation from Senator Holand in which he proposed that the Senate Judiciary Committee be made a two-day committee. His reasoning for that proposal was that many of the attorneys in the Senate who would otherwise serve on the Judiciary Committee have a greater interest in another of the three-day committees, and therefore are precluded from service on the Judiciary Committee. Since it would be desirable to have a fair number of attorneys represented on the Judiciary Committee, Senator Holand hoped that the Senate would see fit to switch one of the present two-day committees with the Judiciary Committee, so that attorneys interested in other three-day committees could also choose to serve on the Judiciary Committee. The Committee did not feel it was large enough to express the "sense of the Senate" on this

proposal and so made no specific recommendation. However, the Committee does recommend the suggestion be further considered by the Legislative Council.

The Committee considered a suggestion from a legislator to the effect that bills making an appropriation be reported out of committee no later than the fifty-fifth legislative day, in order to help alleviate the floor workloads usually occurring on the last three legislative days of the Session. The Committee did not accept that recommendation, but did approve an amendment to Senate Rule No. 44 and House Rule No. 45 to extend the deadline for committees to report on bills from 14 to 21 legislative days.

The Committee believes this to be a more reasonable deadline, and therefore more likely to be enforced. The amendment to Senate Rule No. 44 also includes deletion of the first sentence of that Rule, and insertion of language corresponding to the first sentence of House Rule No. 45, since the current language of Senate Rule No. 44 is ambiguous and very difficult of construction. The Committee believes that the 21-day deadline on committee reporting on a particular bill is long enough to allow for at least two hearings on any bill on which more than one hearing is necessary. That being the case, it should now be feasible to enforce the committee-reporting deadline rule, and require that bills not reported by the deadline be automatically placed on the calendar for second reading without committee recommendation.

The Chairman of the Committee, noting his experience as a Constitutional Convention delegate, suggested that the Committee consider the desirability of providing a rule whereby certain important issues could be scheduled for a time certain for floor debate. It was noted that this procedure worked well during the Constitutional Convention, and was much appreciated by the press and by citizens who were interested in attending during the floor debates on certain issues.

Therefore, the Committee is proposing the creation of Senate Rule No. 52.1 and House Rule No. 53.1 to provide that a standing committee chairman, after consultation with the presiding officer of his House and the Floor Leaders, may request a time certain for debate on certain issues which are deemed to be of great public import. When the time certain has been set, business pending when that time is reached will be held in abeyance, and the debate on the particular issue will be held.

The Committee considered it appropriate that the Appropriations Committees in both Houses should have an extension of their subject-matter jurisdiction to cover bills which would result in a change in the audit or fiscal procedures of a state agency or institution. Because the Appropriations Committees have the most experience and concern with expenditures made by operating departments of government, the Committee feels that they should have an opportunity to consider any bill or resolution which would make a change in the way in which a particular governmental department or institution was to handle its fiscal affairs, or any change in relation to the method by which that department would be audited.

During consideration of this Rule draft, the Committee also considered the dollar limit on appropriations which causes bills to be referred or re-referred to the Appropriations Committees. That limit is presently set so that any bill which appropriates in excess of $500 must be referred or re-referred to an Appropriations Committee. The Committee felt that the dollar limit was unrealistically low, and is proposing amendments to House Rule No. 39 and Senate Rule No. 38 to raise the dollar limit to $2,000, and to extend the Committee's jurisdiction to cover bills affecting a change in the audit or fiscal procedures of a state agency or institution.

The Committee feels that raising the dollar limit to $2,000 will not result in a substantial aggregate dollar amount of appropriations which the Appropriations Committees will not consider or materially affect the budget, but will have a beneficial effect in reducing the total number of bills that those committees must consider. In conjunction with these amendments, corresponding amendments to the Senate and House Rules relating to standing committees have been made to note the changes of Appropriation Committee jurisdiction.

The Committee received a recommendation from the Chief Clerk of the House concerning the method of determining seniority for the purpose of seating of House members. The Chief Clerk had noted that, in the past, there had been several methods of determining seniority used, and that there was always a question in the opening days of the Session as to whether the proper method had been chosen. He desired the Committee to recommend a rule setting forth which method would be used for determining seniority, in order to assure that there be no question, at a later date, about the method used. In addition, the Chief Clerk suggested that the same Rule contain a provision allowing the Speaker to assign extra seats on the floor of the House Chamber to members of the press. The Chief Clerk noted that this was done during the Constitutional Convention and seemed to work very well.

Therefore, the Committee is recommending a Rule which will provide that seniority in the House will be determined by the total number of years which a member has served, regardless of continuity of terms of office, and including terms served in the other House. The Senate already makes such a provision in Rule No. 38.1 which was adopted during the 1971 Session.

In considering the Chief Clerk's suggestion, the Committee determined that it would be appropriate to extend his suggestion so as to make the House Rule on seniority cover other situations in which seniority may be thought to be a factor. Therefore, the Committee is recommending the creation of House Rule No. 39.1 which, in addition to providing a method for determining seniority, also specifies that seating shall be by district delegation. The Rule further provides that the Speaker, in making committee membership assignments, shall consider first the best interests of the State. The individual member's committee assignment preference shall be considered second. In making appointments of committee chairmen, the Speaker is to give no less weight to ability, knowledge of subject matter, and experience than he gives to seniority. In addition to creation of the foregoing Rule, Senate Rule No. 38.1 is amended to delete some now unnecessary language relating to its effective date. Because the Senate Rule was adopted during the 1971 Session, its provisions were not made effective until the 1973 Session.

Because it is often difficult to determine, for purposes of a motion for reconsideration, who voted on the prevailing side of a question on which there was no recorded vote, the Committee is recommending amendments to Senate Rule No. 62 and House Rule No. 63 to ensure that any member can move for reconsideration of a question on which the individual votes of members were not recorded. Thus, on voice votes, any member could move for reconsideration of a question adopted or rejected.

Finally, the Committee recommends an amendment to Joint Legislative Rule No. 14 dealing with fiscal notes. The amendment would delete the requirement that Legislative Council study resolutions having a fiscal impact in excess of $1,000, have fiscal notes attached. The Committee believes that the amount of time which the Legislative Council staff must take to prepare fiscal notes on Council study resolutions is not justified in light of the fact that the fiscal notes can, at best, be only an educated guess. It is extremely difficult to determine what a particular study will cost until the staff has had time to draw up a comprehensive study plan.

LEGISLATIVE INTERNS

The Committee again reviewed the legislative internship program which has been in effect during the last two legislative sessions. The consensus was that the program was worthwhile, both in terms of assistance to the Legislature and in providing experience and education for the interns. Therefore, the Committee is not only recommending that the program be continued, but that it be expanded so that legislative interns will be available to every standing committee, with the exception of the two Appropriations Committees.

To finance this expanding program, the staff of the Legislative Council, with the approval of the Committee, has secured a federal grant of $10,000 through the State Economic Opportunity Office. The Committee is not recommending any increase in the compensation ($600 per month) paid to legislative interns; therefore, the $10,000 grant will be sufficient to cover compensation and fringe benefits for six additional interns.

As was the case during the 1971 Session, the Committee has also directed that the staff request one of the institutions of higher education to select two undergraduate students to serve as bill status reporters. It is the duty of these two students to make the daily data input into the electronic bill status reporting system. For that purpose, the two interns are given seats on the floor of the House and Senate. The Committee is recommending a $100 increase in the salary of the bill status reporters (from $500 per month to $600 per month), and the increase will be funded from the $10,000 federal grant.

All of the interns and the two bill status reporters have been selected by their institution of higher education. Seven of the interns will come from the School of Law; five from the Department of Political Science, UND; and two from North Dakota State University.

As has been the case in the past two sessions, the legislative interns will be under the overall supervision of the staff of the Legislative Council. Two of the interns will be assigned to the majority and minority caucuses, with one serving the House and Senate majority caucuses, and the other serving the House and Senate minority caucuses. The remaining ten interns will be assigned to two standing committees each and will serve the membership of that committee to the extent of their capabilities, with supervision of their drafting efforts by the staff of the Legislative Council.

LEGISLATIVE PROCEDURES

Following the last two Legislative Sessions, the Contract Enroller and Engrosser has been hard pressed to deliver all of the enrolled bills passed in the latter days of the Session to the Governor in time for the Governor to consider them during the 15-day period which he is given to approve or disapprove of bills received after adjournment of the Legislature. In addition, during and following the 1971 Session, there was some misunderstanding or disagreement concerning reproduction of concurrent resolutions which the Legislature required to be distributed to numerous addressees.

The Committee, recognizing that a special legislative negotiating committee will negotiate the next contract with the Contract Enroller and Engrosser, is recommending that the contract provide that the Enroller and Engrosser is, at all times, to give priority to bills over resolutions in the enrolling process, and especially during the period following adjournment of the regular Legislative Session. In addition, the contract should provide that only one copy of each resolution be enrolled, and that the proper authority, be it the Secretary of State, the Chief Clerk of the House, the Secretary of the Senate, or the Legislative Council, prepare any additional copies of the resolution needed for the distribution by whatever method of duplication seems most feasible.

The Committee considered several suggestions concerning the format of the daily bill calendar of the House and Senate. The Committee received suggestions that the listing of bills on second reading and final passage include a notation as to which standing committee the bills had been referred. Another suggestion was that the listing of bills on second reading and final passage contain a brief notation as to subject matter of the bill.

The Committee accepted these suggestions and is now recommending a daily calendar format which would consist of two parts. One part will have a listing of bills on second reading and final passage, with a notation of the standing committee to which they had been referred, and a brief summary statement of the content of the bill. The Committee envisions that the brief summary statement can be drawn from the summary statements of contents of bills in the daily bill status report. Another column of the first part of the calendar will set forth other business which will be occurring during that legislative day.

The second part of the proposed calendar would, as does the calendar presently, present a quick summary of action taken on the previous legislative day, including a notation as to bills and resolutions introduced, and a notation on the previous day's action on bills and resolutions. The calendar format will also be modified somewhat to make it accord with the Committee's recommendation that committee reports for indefinite postponement be held over for one legislative day.

As was done during the last Session, the daily calendars will be reproduced by the Central Duplicating Service of the Department of Accounts and Purchases. The Committee wishes to urge the Employment Committees of both Houses to ensure that the person hired as Calendar Clerk has an adequate knowledge of typing, in order that he can rapidly fill out the daily calendar form.

The Committee also recommends that both Houses adopt a procedure whereby the Calendar Clerk prepares for reproduction a listing, by bill number, of all the bills to be considered the next day, to be distributed at the end of each day's floor session.

MISCELLANEOUS

The Committee, recognizing the value of the "Legislative Handbook for Legislators and Legislative Employees" as a training and informational tool for new legislators and legislative employees, has directed the staff of the Legislative Council to update the 1968 version of the handbook, and to have it ready for distribution during the Organizational Session.

The Committee considered again the use of electronic data processing in the legislative branch, and it was noted that the computer-assisted bill drafting system, previously called for by the Committee, would not be available for use by the Legislature during the 1973 Session due primarily to a lack of physical space for installation of the necessary computer hardware to allow the system to operate. RCA Corporation (now Univac) had a previous agreement with the Legislative Council to develop a computer-assisted bill drafting system for use during the 1973 Session. However, due to a lack of physical facilities, and for other reasons, RCA requested an extension of time from the Committee until 1974, with installation of the system for use by the 1975 Legislative Assembly.

The Committee granted this extension, but since that time, Univac Corporation has purchased RCA Corporation, and, in addition, the Central Data Processing Division of the Department of Accounts and Purchases is giving some consideration to the purchase of new computer hardware.

Thus, the completion date for a computer-assisted bill drafting system is somewhat in doubt.

The Committee became aware, during the initiative petition drive to liberalize the State's anti-abortion law, that there were ambiguities surrounding the question of the method to be used in withdrawing signatures previously placed on initiative, referendum, or recall petitions. Therefore, the Committee is recommending a bill which would amend Section 16-01-11 to provide that, prior to the time that the Secretary of State has certified an initiative, referendum, or recall petition to be sufficient, a person may request the Secretary to cancel his signature by sending a written request signed by the person whose signature appears on the petition. When the Secretary of State receives the request, the signature is deemed withdrawn.

ORGANIZATIONAL SESSION

The agenda for the Organizational Session has been approved by the Committee and provides for a three-day session to be held on Tuesday, Wednesday, and Thursday, December 5-6-7, 1972. The afternoons of the first two days will be devoted to a great extent to orientation sessions for freshmen legislators. Formal party caucuses are scheduled for Tuesday morning, December 5, 1972, at 10:15 a.m.. Adoption of temporary legislative Rules is scheduled for Tuesday afternoon, with adoption of the permanent Rules scheduled for Thursday afternoon.

Announcement of committee assignments is scheduled for early Thursday afternoon. Committee preference questionnaires will be distributed by mail to all legislators prior to the Organizational Session in order to speed the committee appointment process.

The Committee again discussed the desirability of having the Legislative Council staff prepare bill summaries for each bill placed on second reading and final passage. Bill summaries were prepared for House members during the last Session. Although the Committee favored preparation of summaries for both Houses, it decided to leave the decision to prepare to the Council staff, which will act upon specific request of the Legislature, or either House.

Finally, the Committee considered the problem of ensuring proper representation of interim committee viewpoints on bills (recommended by those committees) being considered by standing committees. The Committee passed a motion recommending that the Legislative Council direct the chairmen of the several interim committees to ensure that Legislative Council bills being proposed by their committees be followed up during the Legislative Session, and that, specifically, the chairmen are to assign bills coming from their committees to members of the committees who will be serving during the next regular Session. The assignment will be for the purpose of sponsorship, and for the purpose of making a presentation to the appropriate standing committees. The motion also included a direction to the staff of the Legislative Council that it prepare a letter to be used by the sponsor of the bill in making his presentation to the appropriate standing Committees.

MEMO ON LEGISLATIVE STATISTICS

1. **INTRODUCTIONS:** A total of 666 legislative documents was introduced in the House: 560 bills, 95 concurrent resolutions, 10 resolutions, and one memorial resolution. A total of 613 legislative documents was introduced in the Senate: 512 bills, 93 concurrent resolutions, seven resolutions, and one memorial resolution.

The House considered 358 Senate bills; 294 (82.1 percent) passed, three of which were vetoed. The Senate considered 388 House bills; 317 (81.7 percent) passed, 12 of which were vetoed (10 in their entirety and a section of two others).

Fifty-six and six-tenths percent of the bills introduced in the House and 57.6 percent of the bills introduced in the Senate were passed by both Houses. Two hundred forty-three House bills and 218 Senate bills were killed (by one method or another). The House killed 172 of its own bills and had 71 killed by the Senate. The Senate killed 154 of its own bills and had 64 killed by the House.

Six hundred eleven (57 percent) of the 1,072 bills introduced passed both Houses. Fifty-five and eight-tenths percent of all bills introduced became law. Thirteen bills (1.2 percent) were vetoed and two additional bills had a section vetoed.

The House considered a total of 1,091 legislative documents; the Senate a total of 1,063. The House considered a total of 918 bills in 60 working days, an average of 15.3 bills per day. The Senate considered 900 bills, an average of 15 bills per working day.

2. **SPONSORSHIP OF BILLS AND RESOLUTIONS:** The House: The leading prime sponsor introduced 33 bills (5.9 percent of the total number

of bills introduced in the House). The top five prime sponsors introduced 141 bills, or 25.2 percent of the total. The top 11 prime sponsors introduced 226 bills (40.4 percent of the total). Fifteen Representatives were not the prime sponsors of any bill. Eleven Representatives were the prime sponsors of one bill.

The Senate: The leading prime sponsor introduced 39 bills (7.6 percent of the total number of bills introduced in the Senate). The top six prime sponsors introduced 167 bills, or 32.6 percent of the total. The top ten prime sponsors introduced 235 bills (45.9 percent of the total). One Senator did not prime sponsor any bill. Three Senators were the prime sponsors of one bill.

Six hundred fifty of the 1,072 bills introduced were sponsored by two or more legislators. Four hundred five (62.3 percent) of the 650 bills introduced by two or more legislators passed both Houses. Four hundred twenty-two bills had only a single sponsor and 206 (48.8 percent) of those bills passed both Houses. Ninety-five bills were introduced by the Committees on Appropriations and Delayed Bills in both Houses and 85 (89.5 percent) of those bills passed both Houses.

3. **END OF SESSION ACTIVITY:** Fifty-one and four-tenths percent (314 bills) of the total number of bills (611) passed by the Forty-second Legislative Assembly were passed during the final six working days of the Session (March 9-16, 1971). The House passed 83 Senate bills and 65 House bills; the Senate passed 108 House bills and 58 Senate bills during this period. Eighty-two and eight-tenths percent (48 committees) of the total number (58) of Conference Committees appointed were appointed during March 9-16, 1971.

4. **COMMITTEE ACTIVITIES:** The Judiciary Committees in both Houses considered the greatest number of bills and resolutions (by a Committee) during the 1971 Session (Tables I and II). The number of bills and resolutions considered by committees during the 1969 Session are listed in Tables III and IV.

5. **COMMITTEE "REJECTION" RECORD:** Rejection of a committee report by the body was limited to reports for indefinite postponement, which were rejected (i.e., the report failed of adoption) 26 times (14 in the Senate, and 12 in the House). The committee's original judgment on indefinite postponement was vindicated 34.6 percent of the time; 17 of the 26 bills involved passed the House in which the committee report was rejected.

The number of instances in which the committee report was "do pass" and the bill failed was 36 times: 21 in the Senate and 15 in the House. The number of times in which the recommendation was "do pass as amended", the amendments passed, and the bill failed was 26: 18 in the House and eight in the Senate. The number of instances in which the committee recommended "do pass as amended" and the amendments failed was five: one was amended on the floor and passed, two passed without the amendments, and two failed to pass.

House committees had their recommendations "rejected" in 46 cases out of a total of 947 reports, a rejection percentage of 4.9 percent. Senate committees had their recommendations "rejected" 5.2 percent (47 out of 899) of the time.

6. **NUMBER OF BILLS INTRODUCED BY DATE:** Fifty and nine-tenths percent of all bills introduced in the House and 46.5 percent of all bills introduced in the Senate were introduced in the last three days of the 14-day bill introduction period (Table V). One hundred ninety-one bills (34.1 percent of all House bills) were introduced in the House and 130 bills (25.4 percent of all Senate bills) were introduced in the Senate during the final day (January 22) of the bill introduction period. The Committees on Delayed Bills introduced seven bills in the Senate and two bills in the House.

7. **CONFLICTS:** Twenty-seven Senate bills and 59 House bills were introduced in the 1971 Legislative Session which had at least one conflict in them. For these purposes, a conflict is created when two or more bills amend or repeal the same section of the Code. This total of 86 bills having conflicts is a minimum figure representing only those conflicts detected.

TABLE I

BILLS AND RESOLUTIONS CONSIDERED BY COMMITTEES — 1971*

HOUSE

Committee	Bills	Percent of Total Bills	Resolutions	Percent of Total Resolutions	Total Bills and Resolutions	Percent of Total Bills and Resolutions
Judiciary	142	15.0	7	5.6	149	13.9
Appropriations	130	13.7	5	4.0	135	12.6
State and Federal	112	11.8	31	25.0	143	13.4
Industry, Business and Labor	101	10.7	5	4.0	106	9.9
Education	90	9.5	8	6.5	98	9.2
Finance and Taxation	90	9.5	5	4.0	95	8.9
Political Subdivisions	76	8.0	6	4.8	82	7.6
Transportation	68	7.2	19	15.4	87	8.1
Agriculture	47	5.0	14	11.3	61	5.7
Social Welfare	49	5.2	10	8.1	59	5.5
Natural Resources	35	3.7	12	9.7	47	4.4
Veterans' Affairs	7	.7	2	1.6	9	.8
Total	947	100.0	124	100.0	1,071	100.0

*Does not take into account bills and resolutions re-referred to a standing committee.

TABLE II

BILLS AND RESOLUTIONS CONSIDERED BY COMMITTEES — 1971*

SENATE

Committee	Bills	Percent of Total Bills	Resolutions	Percent of Total Resolutions	Total Bills and Resolutions	Percent of Total Bills and Resolutions
Judiciary	153	17.0	5	4.3	158	15.6
Appropriations	141	15.7	9	7.8	150	14.8
Industry, Business and Labor	102	11.4	9	7.8	111	11.0
State and Federal	97	10.8	19	16.6	116	11.4
Education	80	8.9	9	7.8	89	8.8
Political Subdivisions	75	8.4	4	3.5	79	7.8
Finance and Taxation	65	7.2	4	3.5	69	6.8
Transportation	57	6.3	12	10.4	69	6.8
Social Welfare and Veterans' Affairs	54	6.0	14	12.2	68	6.7
Agriculture	44	4.9	10	8.7	54	5.3
Natural Resources	31	3.4	20	17.4	51	5.0
Total	899	100.0	115	100.0	1,014	100.0

*Does not take into account bills and resolutions re-referred to a standing committee.

TABLE III

BILLS AND RESOLUTIONS CONSIDERED BY COMMITTEES — 1969*

HOUSE

Committee	Number	Percent of Total
Judiciary	114	11.7
State and Federal	109	11.2
Appropriations	101	10.4
Finance and Taxation	99	10.2
Education	93	9.6
Industry and Business	86	8.9
Political Subdivisions	82	8.5
Transportation	75	7.7
Agriculture	64	6.6
Natural Resources	47	4.8
Social Welfare	40	4.1
General Affairs	31	3.2
Labor	18	1.9
Veterans' Affairs	12	1.2
Total	971	100.0

*Does not take into account bills and resolutions re-referred to a standing committee.

TABLE IV

BILLS AND RESOLUTIONS CONSIDERED BY COMMITTEES — 1969*

SENATE

Committee	Number	Percent of Total
State and Federal	124	13.3
Judiciary	123	13.2
Appropriations	112	12.0
Finance and Taxation	102	10.9
Industry, Business and Labor	102	10.9
Political Subdivisions	82	8.8
Education	81	8.7
Transportation	61	6.6
Social Welfare	51	5.5
Agriculture	49	5.3
Natural Resources	45	4.8
Total	932	100.0

*Does not take into account bills and resolutions re-referred to a standing committee.

TABLE V

NUMBER OF BILLS INTRODUCED IN THE HOUSE AND SENATE BY DATE DURING THE FORTY-SECOND LEGISLATIVE ASSEMBLY

Date	SENATE		HOUSE	
	Number of Bills Introduced	Percent of Total	Number of Bills Introduced	Percent of Total
January				
5	130	25.4	126	22.5
6	12	2.3	17	3.0
7	5	1.0	9	1.6
8	13	2.5	1	.2
11	11	2.1	3	.5
12	7	1.4	10	1.8
13	10	2.0	18	3.2
14	14	2.7	22	3.9
15	15	2.9	20	3.6
18	21	4.1	21	3.8
19	29	5.7	26	4.6
20	57	11.1	37	6.6
21	51	10.0	57	10.2
22	130	25.4	191	34.1
Delayed Bills	7	1.4	2	.4
Total	512	100.0	560	100.0

MEDICAL EDUCATION AND SERVICES

This Committee was created by the Legislative Council in December 1971 to meet what Council Chairman Bryce Streibel termed "the urgent and immediate crisis in medical services and education facing North Dakota". The Committee was appointed after a review of the medical education situation and at the urging of the Reverend Peter C. Hinrichs, President, State Board of Higher Education, and Thomas J. Clifford, President, University of North Dakota. "The 1973 Legislature," said Representative Streibel, "will have to make critical decisions affecting not only medical education for the State's youth, but also the medical services and general health care facilities available to North Dakotans for several decades to come."

Representative Oscar Solberg is Committee Chairman. The other Committee members are Senators L. D. Christensen, Evan E. Lips, Robert M. Nasset, and George Unruh; and Representatives A. G. Bunker, Ralph Dotzenrod, Brynhild Haugland, and Robert W. Peterson.

Due to the late start of this Committee, and a final study of the problem still being conducted for the University of North Dakota (UND) by a national management consulting firm, the Committee cannot complete its work until December 1972. Therefore, it cannot include its final report in this biennial report of the Legislative Council to the Forty-third Legislative Assembly, and will file a separate report on its findings and recommendations. The Committee apologizes for the inconvenience this unavoidable delay may cause its fellow legislators.

A Background Look

Although the State Legislature appropriated $1,000 in 1887 for a School of Medicine at UND, medical classes did not begin until 1907, and the first class — consisting of one student — graduated in 1909. Medical education has traditionally been considered a four-year program, although this thinking has changed somewhat lately. The first two years have been traditionally the basic science years, and the final two years the clinical years. The UND Medical School has always been a two-year medical school offering the basic sciences and a smattering of clinical experiences. The students then transfer to a degree-granting medical school in another state to complete their medical education.

Several programs, including the Medical School, the Ireland Research Laboratory, and the Medical Center Rehabilitation Hospital, are administered under an umbrella unit designated as the North Dakota Medical Center. This designation was created by the 1945 Legislature (S.L. 1945, Ch. 172) and embodied in Chapter 15-52 of the North Dakota Century Code.

For most of its years, the UND Medical School received a portion of UND's regular appropriation. However, in November 1948, state residents approved a statewide one-mill levy to support the Medical Center, and in 1949 (S.L. 1949, Ch. 156) the proceeds of the one-mill levy (Art. 60, Amendments to North Dakota Constitution) were authorized for the Medical Center (NDCC Section 15-52-09).

In 1953 (S.L. 1953, Ch. 141), Section 15-52-09 was amended by adding the following language:

> "A sufficient portion of such funds, however, shall be retained by the board of higher education to permit the establishment of a third year course in medicine at the center not later than 1955, and a fourth year course not later than 1956 . . ."

This language, directing the creation of a four-year medical school, remained on the books until it was deleted by the 1967 Legislature (S.L. 1967, Ch. 149) through a bill sponsored by the Legislative Council's Budget Committee.

The Medical Center Loan Fund was created in 1957 (S.L. 1957, Ch. 143) to help pay the expenses of medical and dental students in completing their training in schools outside of North Dakota. Funds for the loans come from the moneys set aside for the third and fourth years of medical school.

For several years, the proceeds from the one-mill levy were sufficient to fund the operation of the Medical Center. However, the Center's expenses gradually outgrew the one-mill levy, and in 1967 the Medical Center, for the first time since the mill levy came into being, asked the Legislature for an additional appropriation. During the 1971-73 biennium the Medical Center's appropriation was approximately $1.2 million from the general fund and $1.4 million from the special fund (mill levy proceeds).

The UND Medical School has 128 freshmen and sophomore medical students. In addition, there

are 33 graduate students studying for master's and doctor's degrees and doing post-graduate work, plus approximately 1,000 other UND students in such courses as nursing, the allied health fields, physical education, and others taking courses at the Medical School.

The Problem

The national 1970 Carnegie Report on Medical Education recommended that two-year medical schools either be phased out or become degree-granting institutions. A Presidential Message bore the same message. Congress followed through by appropriating funds to encourage the change by granting conversion funds to schools which switch from two-year schools to degree-granting institutions. Congress also encouraged expansion through capitation grants and switched the direction of most of its medical education funding from research projects to direct education applications. About this same time, there was an increased national emphasis on the delivery of health care services and a corresponding increased interest and emphasis on family practice. The American Medical Association created a family practice specialty and several schools, including the University of Minnesota, began a family practice residency. Family practice is generally considered the modern version of the doctor formerly known as a general practitioner (GP).

In early January 1971, Dr. Wallace Nelson, Assistant Dean, UND Medical School, and Dr. John Vennes, Hill Professor of Microbiology and Chairman, UND Medical School Curriculum Committee, reported that by 1975 the UND Medical School would probably find it impossible to transfer its entire sophomore class to degree-granting institutions. Transfer difficulties arose because of the increased number of graduate students transferring into the clinical years, lower attrition rates, large numbers of Americans in foreign schools transferring back to home state medical schools, and increasing application pressure on medical schools from their own states. There seems to be an ever-increasing number of better qualified applicants for medical schools, thus reducing the number of dropouts. In the fall of 1972, for example, there were 13,000 freshmen class spots for over 30,000 applicants. Of those not admitted, it is estimated that 10,000 were well qualified. Many of these will go to foreign schools for the first two years of basic sciences and then transfer back to degree-granting institutions in the United States. The UND Medical School now has 112 applications from North Dakotans for the 64 slots in its fall 1973 class. There are an additional 123 out-of-state applications for these same openings.

In October 1971, the UND Medical School polled 45 degree-granting medical schools across the country which in the past had accepted a number of UND Medical School transfers. They were asked if they would be able to continue accepting UND medical students after 1975. Twenty-two of these schools, which as a group had accepted 49 percent of the UND Medical School transfers in the last five years, said "no". Eighteen schools, which as a group had accepted 50 percent of the UND Medical School students in the last five years, replied with a qualified "yes". Five schools did not respond to the survey.

Another breakdown of this same questionnaire split-out eight schools which had accepted 65 percent of the UND Medical School transfers in the last five years. Of these eight, five of them, which as a group had accepted 34 percent of that 65 percent, said they would not accept transfer students after 1975. Three of them, representing 31 percent of that 65 percent, said they would accept transfers. The major problem in all instances appeared to be space. The University of Minnesota Medical School, which has accepted 23 percent of the UND Medical School transfers in the last five years, was among those schools saying they would continue to accept transfer students after 1975.

At its annual meeting in May 1971, the House of Delegates of the North Dakota State Medical Association unanimously adopted a resolution approving the principle of feasibility studies for the establishment of a comprehensive health education program and directing the North Dakota Medical Research Foundation (NDMRF) to implement the study.

In July 1971, the Medical Center Advisory Council unanimously approved the proposed feasibility study and directed that it be initiated and carried out by the NDMRF. In July 1971, the NDMRF Board, which is a part of the North Dakota State Medical Association, hired Mr. Gary Dunn, Assistant Dean, School of Medicine, University of Alabama, to direct the research project. The study began in September 1971.

In December 1971, the State Board of Higher Education approved a letter of intent to convert to a degree-granting school from UND President Thomas J. Clifford to the Division of Health Manpower at the National Institute of Health, pending the final results of the Dunn Report and legislative approval. This action was taken primarily to obtain priority for conversion funds.

The Federal Government will provide $50,000 for each student who begins his junior year in a

conversion program by the fall of 1974. These funds must be applied for by July 1974 at the latest.

The Dunn Report assessed health manpower in North Dakota and evaluated the training of health care workers in the State. The study involved all North Dakota physicians, hospitals, clinics, and other health and medical training programs, as well as other educational institutions in North Dakota and several out-of-state medical institutions and schools, including those in Minnesota, South Dakota, Washington, and Montana.

In September 1971, the NDMRF discussed the progress and direction of the study, and ordered that top priority be given to the UND Medical School situation. At the same time, the North Dakota Regional Medical Program formed a Health-Manpower Study Group composed of North Dakota citizens and legislators to serve in a consultative capacity to the study.

In November 1971, the North Dakota State Health Planning Council held an interagency forum in Bismarck to discuss the entire range of allied health education in North Dakota.

In December 1971, the North Dakota Legislative Council created its committee on Medical Education and Services. The Committee held its first meeting in January 1972.

Dunn Report

The Dunn Report was completed and presented to the NDMRF March 24, 1972. It covered allied health training in North Dakota, a study of the UND Medical School, evaluation of medical resources in North Dakota, presentation of the alternatives facing the UND Medical School, and a look at the opportunities for funding.

A questionnaire was sent to all the physicians in the State, as part of this study, asking if they would be interested in teaching medical students providing released time for preparation and compensation for effort were available. Slightly less than half the physicians queried returned the questionnaire. Of those replying, 89 percent expressed an interest in teaching medical students. Approximately 59 percent of all of the private physicians in the State expressed an interest in teaching. In the cities of Fargo, Bismarck, Grand Forks, and Minot, the interest in teaching averaged 65 percent of the physician population, while 49 percent of the physicians practicing in all other areas of the State expressed a similar interest.

The Dunn Report stated that there was adequate patient material and enough hospital beds in North Dakota to handle the clinical aspects of a degree-granting medical school program.

The report considered five alternatives. The first was to cease operation of the UND Medical School. It said this would result in an immediate financial gain to the State but that such a gain would be offset by the expense of starting a new medical school at a future date should the State change its mind. It also would deny a medical education to many North Dakota students, said the report. During the 1970-71 school year, 53 North Dakota residents attended medical school as first-year students. Forty-five of these attended UND. Of the States having no medical schools, the following are the number of residents each had enrolled in a first-year medical school in 1970-71: Alaska, 5; Delaware, 28; Idaho, 23; Maine, 19; Montana, 26; Nevada, 14; and Wyoming, 17. The report also said that closing the UND Medical School would seriously affect the State's economy. The Medical School, it said, has become a basic industry in the State, bringing in millions of dollars of federal moneys over a period of several years. UND would also be seriously affected if the Medical School closed since so many other students, in addition to medical students, use the facilities.

Another alternative was to establish contractual relationships with degree-granting medical schools. This the report indicated as difficult since most degree-granting institutions are already cramped for space. It saw this as very expensive since the State, in effect, would be "renting medical education" instead of "buying", and as a result would eventually see less medical care return for the dollars invested. The Medical School itself would also lose the capitation grants and conversion moneys available. The report said that since many students remain in the area where they finish medical school, North Dakota could potentially lose even more than what it called the "meager ratio of physicians it presently retains by requiring students to train in other regions".

A third alternative was to develop a degree-granting program in cooperation with other states. The report said there was little favorable response from Minnesota or South Dakota to this idea.

The alternative of maintaining the status quo would mean, said the report, that students would have to be informed of the risk they would take in not being able to transfer into a third-year class at some other medical school. The report also said the State would lose the unique opportunity to expand by failing to take advantage of federal

moneys now available for expansion and that, because federal funding incentives favor the degree-granting medical schools, two-year schools in the future may find it difficult to retain and replace faculty.

The final alternative was to develop a degree-granting medical school in North Dakota. Among benefits this would bring, said the report, was a possible increase in the number of physicians in the State since national figures indicate students tend to remain in the area where they finish medical education; a continuation of the high rate of North Dakota residents' acceptance in Medical School; elimination of the transfer problem; and a boost to the State's economy through the increase of private and federal moneys and more physicians.

The report said funding possibilities existed on the federal level, from the Veterans' Administration, from the National Academy of Sciences, and from several private foundations. The report presented a tentative budget of slightly under $5 million annually for a degree-granting medical education program in North Dakota.

In May 1972, the North Dakota State Medical Association's House of Delegates approved, in principle, the development of a degree-granting curriculum at UND within the near future. At the same time, a 16-member liaison committee of physicians was appointed by the North Dakota State Medical Association to work with UND and the State Legislature to aid in the development of a degree-granting medical school in North Dakota.

In July 1972, UND President Clifford appointed a three-man Medical Affairs Committee to examine and document all the alternatives to a degree-granting school of medicine, to develop a feasible plan for such a school in North Dakota, to prepare a budget for the program, and to present recommendations to him for transmittal to the State Board of Higher Education.

AHECs

That same month, the Bureau of Health Manpower Education of the National Institutes of Health sent letters of solicitation to 110 medical schools requesting proposals for the development of Area Health Education Centers (AHECs). AHECs were to be centered around health-care facilities in communities some distance from medical schools. They were to use the funds they would receive to conduct continuing educational programs for physicians, residency training programs, and clinical instruction for undergraduate medical students as well as for providing continuing education for other health practitioners, clinical instruction for other undergraduates in the allied health fields, and assistance to educational institutions and health care facilities in the area in developing training programs for health personnel. Task forces were organized in Bismarck, Minot, Fargo, and Grand Forks to begin planning AHEC programs. On September 30, 1972, North Dakota was notified it would receive one of ten AHEC grants awarded. The grant is for $2.65 million and is to be spread among the four AHECs over the next five years. The AHEC funds play a major role in the proposed funding of the degree-granting medical education program.

In August 1972, representatives from the four AHEC sites, along with members of the Legislative Council's Medical Education and Services Committee, attended a seminar at Michigan State University in East Lansing, Michigan, on the concept of running a degree-granting medical education program away from a central university complex.

The Proposal

The UND Medical Affairs Committee's proposal for a degree-granting medical program in North Dakota calls for a class of 64 students in each of the final two years of medicine. Considering a single class, 24 students would transfer at the end of their second year to degree-granting programs in other states. The remaining 40 students would be divided among the four AHECs for their third year. A student's fourth or last year of medicine (a period actually covering seven calendar months) would be spent in elective programs. These programs might be at one of the four AHECs, at UND, at other hospitals, clinics, or with private physicians elsewhere in the State; or out-of-state.

The proposed budget for the program is planned on the basis of 40 students entering the program in the fall of 1974. However, about one-half the clinical science faculty is budgeted for the fall of 1973 to begin planning.

The proposed budget for the 1973-75 biennium is $7.4 million, with $5.3 million coming from state funds and $2.1 million coming from other sources. These other sources include federal capitation funds, federal conversion funds, and private foundation grants. State support includes general fund moneys and mill levy income. The instructors in the clinical courses in the AHECs are budgeted to be paid at Medical School levels and not at practice income levels. The proposal calls

for additional physicians to be introduced into the four AHEC communities. Most of these physicians will be spending full time with the students, although some would only be part-time teachers. A report in October 1972 indicated that, based on maximum teaching needs and the estimate of available teaching time in the AHECs, there would be a need for an additional 6.1 physicians in Bismarck, 7.6 in Fargo, 5 in Grand Forks, and 7.7 in Minot.

It was indicated that the 1973-75 budget figures would probably hold true, with the same number of students, over the next few years with the addition of five percent per year for inflation. However, the split of budget resources between the State and other sources would not remain constant since both the AHEC funds and the conversion grant funds would run out within five years. The UND Medical Affairs Committee said that it can be anticipated that the Federal Government will continue to support from one-third to one-half of medical education costs.

During the current biennium, the Medical School received an appropriation of $2,671,643. Of this total, $1,417,000 came from the mill levy and $1,254,643 came from the general fund. The Medical Center is seeking an appropriation of $3,047,976 for the 1973-75 biennium. This figure represents a 14 percent increase over its 1971-73 appropriation. The mill levy would provide $1,417,000 of the 1973-75 request, while the general fund would provide the remainder, or $1,630,976.

Retaining and Obtaining Physicians

The proposal indicates that the degree-granting program and its residencies would stress primary care such as family, internal, and pediatric medicine. The proposal makes no promises that the program would automatically mean more physicians for the State. However, it was pointed out that national figures indicate that approximately one-half of the medical students remain in the area where they finish their education.

It is difficult to compile accurate figures on the number of UND Medical School graduates who return to North Dakota because of the nature of medical education. A typical UND medical student spends two years at the UND Medical School. He then transfers to another medical school for his final two years. Following this there is a year of internship followed generally by two years of some type of military or government service. Then, depending upon his inclinations, he may either go into practice or spend three to four years, and sometimes five years, in a residency to gain certification as a specialist.

Assuming he pursues a specialty, there is generally a lag time of from five to 10 years between the time a student leaves UND Medical School to the time he is thinking about starting to practice on his own. However, it is well to note that from the time he receives his M.D. degree, i.e., through all his years of internship, military service, and residency, he is providing medical services.

At the present time approximately 35 percent of the physicians in North Dakota are UND Medical School graduates. Approximately half of the general practitioners in the State are UND Medical School graduates.

Figures from the UND Medical School indicate that from the classes of 1949-1952, 50 percent of the physicians returned to practice in North Dakota; from 1953-1956, 25 percent returned; from 1957-1960, 41 percent returned; and from 1961-1964, 15 percent returned. The latter figure already reflects, to some extent, the timelag mentioned earlier. While it is still too early for accurate figures, because of the aforementioned timelag, only five percent of the class of 1965-1968 have so far returned.

Of the 1,381 UND Medical School graduates currently practicing in the United States, 16 percent are practicing in Minnesota, 15 percent in California, 14 percent in North Dakota, and 55 percent in other states.

Remaining Study

UND has contracted with the national management consulting firm of Booz, Allen & Hamilton, Inc., to examine the various alternative courses of action facing medical education in North Dakota, with particular emphasis on the economic impact of each alternative on the State. The study will also identify the benefits which should accrue to the citizens of North Dakota under each alternative. The study is being financed by a grant from the Lewis and Maud Hill Family Foundation.

The study is to include four alternatives: (1) Continue the two-year medical school with open ended transfers, i.e., maintain the status quo; (2) Develop contractual arrangements with degree-granting medical schools; (3) Develop a regional medical educational program with the University of South Dakota Medical School; and (4) Develop a degree-granting medical education program in North Dakota.

The firm is to have a detailed outline of its final report prepared by November 15, 1972, and a final report ready for delivery to UND President Clifford by December 1, 1972.

Committee Work

The Legislative Council's Committee on Medical Education and Services has held three meetings. Two of them have been held in Bismarck, and the third was held jointly with the State Board of Higher Education in Grand Forks. Approximately 75-100 persons have attended each of these meetings, and several organizations and interest groups, as well as individuals, have made presentations at each meeting.

The Committee believes there are several questions which must be answered before it can make any recommendations to the 1973 Legislature concerning the proposed degree-granting medical education program. These questions have been raised both by Committee members, and by the individuals and organizations appearing at the Committee meetings, particularly physicians and clinic personnel. Both the Committee and the Board of Higher Education expect that many of these questions will be answered by the Booz, Allen & Hamilton, Inc., report, and thus are planning another joint meeting when sufficient material is available from that report.

The Committee believes the various alternatives raised, both by the UND Medical Affairs Committee itself and also by other physicians, must be more thoroughly explored and their viability determined with as much certainty as possible. The first of these alternatives, of course, is to maintain the status quo. This appears to depend primarily on the continued opportunity for UND's two-year students to transfer to degree-granting institutions to complete their education. The UND Medical Affairs Committee has done extensive polling of other medical schools on this question and has determined that after 1975 the medical school will most likely be able to transfer only about one-third to one-half of its present class. The Dunn Report also conducted a similar survey and reached a similar opinion. Unfortunately, the results of such surveys seem to vary with the way the question is phrased and when the question is asked. The University of South Dakota's two-year medical school conducted a similar survey but received a somewhat more optimistic response. The Committee expects the Booz, Allen & Hamilton, Inc., report to provide some definitive statistics in this area.

Other questions remain concerning the alternatives of a regional medical program of some type with Montana or South Dakota, or a contractual arrangement with some already established degree-granting institution, most likely the University of Minnesota. The Dunn Report did not go into much depth in exploring the possibilities of a regional medical program. What contact and negotiations there have been in this regard appear to be negative or noncommittal, but a concerted effort has not been made to date to thoroughly and finally resolve this possibility. Again, the Booz, Allen & Hamilton, Inc., report must deal as conclusively as possible with this matter.

The University of South Dakota's two-year medical school faces approximately the same situation as does UND's. However, it appears that South Dakota officials have not gone as far as UND has in exploring possible solutions and presenting usable alternatives. The Committee was told that at this time North Dakota would probably only compound its medical education problems by joining forces with South Dakota.

The contracting possibility, in a variety of forms, appears to the Committee to be one of the biggest, if not the biggest, question in considering alternatives. This involves contracting for the final two years of medical education, or for all four years of medical education. Tied inextricably to contracting, and to most of the other alternatives, is the question of establishing residencies in North Dakota.

The UND Medical Affairs Committee has discussed with the University of Minnesota Medical School the possibility of that school contracting to accept all of the UND medical students after their first two years at UND. Minnesota so far has been unable to come up with a cost-per-medical-student figure upon which they could base an estimate of how much it would cost North Dakota per student to send its medical students to the University of Minnesota. The University of Minnesota Medical School has expressed a general willingness to explore such contracting possibilities further, but it has also said there must be a firm commitment to such a plan by the State of North Dakota before it can be considered by the University of Minnesota. In other words, the contracting option cannot be North Dakota's second or third choice, for example. The University of Minnesota is expected to have the financial information available for the Booz, Allen & Hamilton, Inc., study.

It has been suggested, primarily by physicians in the Fargo area, that the UND Medical School continue its two-year program, develop a method

to provide for the final years of education through either contracting or continuing the transfer system, and that the four AHECs use their funds and resources to develop residencies. The proponents of this plan say this would improve the health care in these areas, and the surrounding vicinities, by supplying more physicians and allied health care personnel through the residency programs. At the same time such a plan would presumably be bringing North Dakota students back to the State to participate in the residencies, thus increasing the chances that they would remain in the State once the residencies are completed.

Several physicians testified that residency programs could not be developed in North Dakota until there is an affiliation with a degree-granting medical school. This affiliation, they said, could come with a degree-granting program in the State or through a contract with an out-of-state degree-granting institution.

Another important question to be considered is the economic impact on the State of either losing its two-year medical school or going to one of the alternatives already discussed. Tied to this question is the larger question of how to approach this whole problem. Should it be looked upon strictly from a cost standpoint, or should it be looked upon as a determination of how to obtain the best possible health care for North Dakota citizens and how best to encourage more physicians to remain in North Dakota?

And finally, there are still many questions concerning the best class size should the proposed degree-granting program be established in North Dakota. Many of the doubts about the program voiced by the Fargo-area physicians, for example, are centered on concern that the proposed class sizes are too large. It appears that the class size question must be determined by a decision of the four AHECs as to how many students they can accommodate. Naturally, the class size will also determine to a great extent the program's cost.

MODEL LAWS AND INTERGOVERNMENTAL COOPERATION

House Concurrent Resolution No. 3053 directed the Legislative Council to study the feasibility and desirability of adopting the Uniform Probate Code drafted by the National Conference of Commissioners on Uniform State Law. This study was assigned to the Committee on Model Laws and Intergovernmental Cooperation, consisting of Senators George M. Unruh, Chairman, C. Morris Anderson, and Myron Just; and Representatives Charles Herman, Eldor Miller, Arthur Raymond, Leonard Rice, and Oscar Solberg. The Legislative Council also assigned to this Committee the responsibility of reviewing uniform and model Acts recently proposed to determine whether recommendations should be made to the Forty-third Legislative Assembly regarding adoption of any of them.

In carrying out this portion of its responsibility, the Committee reviewed the Uniform Marriage and Divorce Act; the Model Public Defender Act; the Uniform Act on Status of Convicted Persons; the Model State Administrative Procedures Act; the Uniform Land Sales Practices Act; the Uniform Supervision of Trustees for Charitable Purposes Act; the Uniform Trustees' Powers Act; the Uniform Deceptive Trade Practices Act; the Uniform Arbitration Act; the Uniform Motor Vehicle Accident Reparations Act; the Uniform Abortion Act; the Uniform Alcoholism and Intoxication Treatment Act; the Model Relocation Assistance Act; and the Uniform Disposition of Community Property Rights at Death Act.

The Committee tabled consideration of the Uniform Abortion Act in light of the sound defeat of a similar bill at both the 1969 and 1971 Sessions. The Committee tabled discussion of the Uniform Motor Vehicle Accident Reparations Act because the interim Committee on Industry and Business was making a separate study of the topic of "no-fault" insurance.

During discussion on the Uniform Marriage and Divorce Act, it was noted that North Dakota's divorce statutes had recently been amended to create a new ground for divorce known as "irreconcilable differences". It was the consensus of the Committee that, in light of this amendment, further consideration of the Uniform Marriage and Divorce Act be held in abeyance until some future time.

Because the interim Committee on Judiciary "B" was undertaking a revision of the Criminal Code, including consideration of the status of convicted persons, the Committee gave no further consideration to the Uniform Act on Status of Convicted Persons.

In regard to the Uniform Land Sales Practices Act which deals with the selling of subdivided land located outside the State, the Committee noted that House Bill No. 1250 (passed during the last Session) also regulated out-of-state subdivided lands. Because that bill was so recently passed, the Committee took no further action on the Land Sales Practices Act.

The Committee decided to focus its attention for this phase of its study on three bills: the Uniform Disposition of Community Property Rights at Death Act; the Model Public Defender Act; and the Model Relocation Assistance Act. This latter Act was brought to the attention of the Committee by the Governor's office and the Attorney General's office.

The report of the Committee on Model Laws and Intergovernmental Cooperation was submitted to the Legislative Council at the biennial meeting of the Council held at Camp Grafton. The report and recommended legislation were adopted for submission to the Forty-third Legislative Assembly by the Legislative Council in November 1972.

The Committee recommends the following bills:

Disposition of Community Property at Death

The Uniform Disposition of Community Property Rights at Death Act is designed to provide a uniform statutory procedure where one of a married couple dies in North Dakota and owns, at death, community property acquired in another state, or property acquired elsewhere which is traceable to community property funds. Although this should not be a frequent problem, the Committee felt it best to provide a statutory solution in order to prevent long periods of litigation which might ensue if the policy is not clearly set out.

Section 1 of the Act defines its scope. The Act applies to all personal property acquired as community property, or traceable to that community property because it was purchased with the income or proceeds of community property. The

Act also applies to real property within this State which was acquired with the income or proceeds from community property.

Section 2 of the Act establishes two rebuttable presumptions: first, that property acquired during marriage in a community property state is community property; and second, that real property located in this State and personal property located anywhere, title to which is held in joint tenancy, which was acquired in a noncommunity property state is not community property.

Section 3 is the heart of the bill, and provides that upon the death of a married person, one-half of the property to which the Act applies remains the property of the surviving spouse and is not subject to disposition by will or under the intestacy laws of this State. The section goes on to provide that the one-half of the property which belongs to the decedent is not subject to the surviving spouse's right to elect to take against the decedent's will. North Dakota does not presently allow an election to take against a will; however, if the Uniform Probate Code is adopted, such an election would be allowed.

Sections 4 and 5 of the Act provide for perfection of title to one-half of the "community property" in the surviving spouse or the personal representative of the decedent. Perfection is accomplished by an order of the county court in the case of a surviving spouse or by action to perfect title by the personal representative in case the decedent was entitled to a one-half interest.

Section 6 provides protection for purchasers for value or lenders who take a security interest in property subject to the Act. To the extent that either a surviving spouse or personal representative have "apparent" title to the "community property", a subsequent good faith purchaser or lender takes the property or a security interest free of any claims of the surviving spouse or the decedent's personal representative.

Section 7 provides that married persons are not prevented by the Act from severing or altering their interests in "community property". The section also provides that the rights of creditors are not affected by the Act, nor is the Act intended to authorize a person to dispose of property by will if he is under other limitations preventing such disposition.

Governmental Relocation Assistance

The Model Relocation Assistance Act was recently drafted by the Council of State Governments to provide a uniform general authorization for states to act in compliance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Public Law 91-646). That federal Act requires that all state programs which are funded wholly or partially by federal funds and which require the acquisition of private property to include provision for relocation assistance.

A letter from the Vice President of the United States to the Governor was referred to the Committee. This letter requested the Governor to take steps to "achieve the enactment" of the Model Act in North Dakota. The Committee was also aware that the Attorney General's office had received numerous inquiries from state agencies regarding their ability to comply with the federal Act. For the most part, the Attorney General felt that state agencies could comply, but to remove doubt, it would be desirable to enact comprehensive legislation.

During its consideration of the bill, the Committee heard testimony from personnel of the Highway Department who indicated that the Department favored the program and had been operating under it since 1968.

With this background and after further consideration, the Committee recommends a bill essentially embodying the Model Relocation Assistance Act. The Act provides for relocation assistance payments to displaced persons or businesses who are forced to move themselves or their personal property as a result of acquisition of their real property by a governmental agency. The relocation assistance payment would be in addition to any payments made as a result of a condemnation action, or to any payment made for purchase of the real property.

Section 3 of the bill states that "fair and reasonable" payments are to be made for the actual moving expenses of the displaced person in moving his family, business, farm operation, or other personal property. In addition, actual losses of tangible personal property are also to be reimbursed, but not in an amount exceeding the reasonable expense necessary to relocate such property. The expenses incurred in searching for a replacement business or farm are also to be reimbursed to the extent that they are reasonable.

A person who is displaced from his dwelling can elect to receive a scheduled payment in lieu of his actual expenses which would consist of a moving expense allowance not to exceed $300 and a dislocation allowance not to exceed $200. The

actual amount of the allowance would be determined according to a schedule established by the agency acquiring his real property.

A person who is displaced from a business or farm can also elect to accept an in-lieu payment in an amount equal to the average annual net earnings of the business or farm, but not less than $2,500 nor more than $10,000. However, a businessman cannot elect to take this payment unless he satisfies the agency that his business cannot be relocated "without a substantial loss of its existing patronage", and that his business is not part of a commercial enterprise consisting of two or more businesses of the same type, e.g., a McDonald's hamburger stand.

Section 4 of the Act relates to an additional payment, not to exceed $15,000, which can be made to a displaced person who owned his own home on the acquired property, and occupied it for not less than 180 days prior to the commencement of negotiations for acquisition of the property. This additional payment will be made only if the displaced person purchases another house within one year after receiving payment for his old house, or moving from his old house, whichever is later. The additional payment will consist of the following elements: an amount which, when added to the amount paid as just compensation under eminent domain, equals the cost of a comparable replacement dwelling located in this State, which is "decent, safe, and sanitary", which is accessible to public services and places of employment, and which is available on the private market. Second, the amount which will compensate the displaced person for increased interest costs which he is required to pay for financing the new home. And third, reasonable expenses incurred for title opinions, recording fees, and other closing costs.

Section 5 of the Act provides for an additional payment to displaced tenants who occupied rental premises for 90 days prior to the time that the governmental agency initiated negotiations for acquisition of those rental premises. This additional payment can be either the amount necessary to enable the tenant to lease a comparable unit in this State for up to four years, but not to exceed $4,000 total, or the amount necessary to enable the displaced tenant to make a down payment on the purchase of a home. The latter amount also shall not exceed $4,000, and if it exceeds $2,000 the displaced tenant must match any amount in excess of $2,000 in making the down payment.

Section 6 of the bill requires that agencies acquiring real property must provide a "relocation assistance advisory program" for persons displaced as a result of the acquisition. The advisory program is to include assistance to owners of displaced businesses or farms in obtaining and becoming established in replacement businesses or farms. The program must also be designed to supply information concerning other programs offering assistance to displaced persons and businesses, and is to assist in minimizing hardships to displaced persons.

Section 7 of the bill requires that when an agency is about to undertake a land acquisition program, it is to take steps to ensure that standard housing will be available for displaced persons at the time of displacement. However, the agency, by regulation, may prescribe situations, when assurances of availability of standard housing may be waived.

Section 8 of the bill provides that each state agency, in consultation with the State Planning Division, is to establish regulations and procedures for implementation of the bill. Political subdivisions are also to establish regulations and procedures, and may consult with the State Planning Division in doing so.

Regulations promulgated must provide that payments and assistance authorized by the bill be administered in a fair, reasonable, and uniform manner; that a displaced person who makes proper application be paid promptly after his move, or, in hardship cases be paid in advance; and that persons aggrieved by the administrative determination as to their eligibility for payment, or as to the amount of payment, can have their application reviewed by the head of the agency.

Section 9 of the bill provides that agencies may contract for services in connection with land acquisition programs and relocation assistance programs, and may also allow their functions under the bill to be performed by a federal agency or other governmental entity having an established relocation assistance program. Section 10 provides that all funds appropriated to an agency for land acquisition programs are to be considered available for necessary relocation assistance payments.

Section 11 authorizes the State to participate in local relocation assistance payments to the extent that the State offers financial assistance, for the particular land acquisition project, to a political subdivision. Section 12 of the Act provides that relocation assistance can be given to persons who are displaced as a direct result of a building rehabilitation program conducted by a governmental unit.

Section 13 provides that no payments received by a displaced person under the bill are to be considered as income or resources in determining eligibility for welfare, or for state income tax purposes.

Section 14 provides that persons aggrieved by an agency's determination as to their eligibility for payments may appeal to the district court under the Administrative Procedures Act, Chapter 28-32, NDCC.

Section 15 of the Act provides that relocation assistance payments are not to be considered an element of damage in a condemnation proceeding. Thus, a landowner could not raise the question of how much he should be paid to relocate his business or dwelling in the condemnation suit in which it was decided what the purchase price of his business or dwelling should be.

Public Defenders

During its consideration of the Model Public Defender Act, the Committee heard testimony from Mr. Kent Higgins, the Regional Public Defender located in Bismarck. Mr. Higgins' office serves a 10-county area, surrounding and including Burleigh County, and is funded by a grant from the Combined Law Enforcement Council, with matching funds coming from each of the 10 counties.

During his testimony, Mr. Higgins stated that he thought creation of a statewide regional public defender system would be desirable and would solve some of the problems that many small counties have in financing criminal defense of indigent persons. Mr. Higgins estimated that when his public defender office was fully operational, it would handle about 300 cases per year at a cost per case of approximately $100. (Note: Since Mr. Higgin's testimony, the budget for the public defender's office has been set at $48,000 per year, thus raising the cost per case to approximately $160.) Mr. Higgins reported that as of December 1971 his salary was $14,000 per year.

In addition to hearing from Mr. Higgins, the Committee heard testimony from representatives of the Combined Law Enforcement Council indicating that there was a good possibility that a portion of the cost of a statewide public defender program could be funded by a federal grant during the first one or two years of the program's operation.

After further consideration, the Committee recommended a bill essentially embodying the Model Public Defender Act. The bill creates two chapters of the Century Code, Chapter 29-07.1 and Chapter 54-12.1. Chapter 54-12.1 relates to creation of the office of Defender General in the executive branch of government.

The Defender General is to be appointed by the Governor for a term of six years, with confirmation by the Senate. An appointee must be licensed to practice law in North Dakota. He may be removed from office in the same manner as elected county officials are removed by the Governor, if a request for his removal, signed by five electors, is filed with the Governor.

The Defender General is given primary responsibility for providing legal services to needy persons, and is not subject to the supervision of any other executive branch official or agency. He is also not to be assigned any duties in addition to those prescribed in the bill, nor is he to practice law except in performance of his duties as Defender General.

The Defender General is given authority to contract with private or public legal aid organizations which are equipped to provide defense services to needy persons, or to carry out any other function of his office. A contract made under this authorization must provide that the services performed meet the professional standards required of the Defender General's office, and the services must be performed under his supervision. He is to submit an annual report to the Governor and to the Legislative Council indicating the number of persons represented, the crimes involved, the outcome of each case, and a breakdown of total expenditures.

The Defender General is authorized to establish district offices and appoint district public defenders, but may not establish more district offices than there are regional governmental units as designated presently, or in the future, by the Governor. The compensation received by district public defenders will be set by the Defender General, within the limits of legislative appropriations.

The district public defenders, and other persons in the direct employ of the Defender General, will serve at his pleasure, and he may set their salary within legislative appropriations. District public defenders and any deputy Defender General must be licensed to practice law in North Dakota, and must be competent to represent a criminal defendant.

The bill directs the Director of Institutions to provide appropriate office space in Bismarck for

the Defender General. Offices for district public defenders are to be arranged for by the Defender General.

Public defender services are to be extended to a needy person who has been charged with a "serious crime" which is defined as an offense defined by a statute which provides for punishment by incarceration, or any other act which, but for the age of the actor, would be a serious crime. Thus, the public defender could be called upon to defend an indigent juvenile in a delinquency proceeding. The right to public representation is also extended to needy persons who are being detained by law enforcement officers without charge, or who are being detained on conviction of a serious crime. This latter provision is to allow representation during post-conviction proceedings, and on appeal. The right of a needy person to be represented by an attorney also extends to hearings for revocation of any probation or parole previously granted.

Chapter 29-07.1 defines a "needy person" as a person who is financially unable "without undue hardship" to provide for the full payment of an attorney for his criminal defense, or who is otherwise unable to employ an attorney.

Law enforcement officers, magistrates, or courts who come in contact with a needy person not represented by an attorney, in cases in which he is entitled under this bill, to representation are to inform him of his right to an attorney, and if he is needy and cannot provide an attorney, to notify the appropriate public defender.

In making a determination as to whether a person is "needy", the court can take into consideration his income, property owned, outstanding obligations, and number and ages of his dependants. In addition, the court may seek the assistance of public welfare personnel in investigating the financial background of the person, and may request information concerning the person's income from the Tax Commissioner. In each case, the court will require the person to certify in writing the material factors which relate to his ability to pay. The person is subject to the penalties for perjury for falsification of this certification. A needy person may, if he has been fully informed, waive his right to representation at public expense.

Public defenders in representing needy persons are entitled to use facilities and technical services for the development or evaluation of evidence on the same basis on which those services or facilities are available to the prosecuting attorney.

The Defender General is empowered to seek reimbursement from anyone who has received public defense services to which he was not entitled, or in situations in which he was not a needy person when he received it, or had failed to make the written certification documenting his need for public defense services. Suit to recover reimbursement from a defendant in these cases must be brought within six years after the date on which aid was received. The Defender General is also authorized to bring suit, within three years from the date aid is received, against any person who was "needy" at the time he received aid, but has since become financially able to reimburse the State for that aid. All moneys recovered as a result of reimbursement suits by the Defender General are to be deposited into the general fund.

If the court must assign an attorney to represent a needy defendant because of the unavailability of the public defender, the court is directed to prescribe a reasonable rate of compensation for his services, and to determine the direct expenses for which the attorney should be reimbursed. Payment or reimbursement is to be made from state funds. The total cost of operation of the Defender General's office and of regional public defenders is to be borne by the State.

Uniform Probate Code

The final bill being recommended by the Committee is the Uniform Probate Code. The Committee delayed its consideration of the Probate Code until later in the biennium, because it wished to await the outcome of the Constitutional Convention. The Committee had communicated to the Constitutional Convention its desire that the Convention consider a new constitutional provision calling for a unified court system. The Committee's interest in a unified court system was based on the fact that the Uniform Probate Code is designed to operate in a court with general jurisdiction over all matters related to probate of decedents' estates, trusts, guardianships, etc. Although the Convention did propose a unified court system, the proposed Constitution was, of course, rejected.

Thereafter, the Committee heard testimony from a judge of a county court with increased jurisdiction. This judge, who was also a member of the State Bar Association's committee studying the Uniform Probate Code, recommended that the Committee approve the bill. The Committee also considered communications from other members of that State Bar Association committee. In addition, the Committee heard from the sponsor of the study resolution concerning his desire to see the

bill introduced during the next Session. The sponsor stated he believed that there was a great deal of public desire for a reform of probate laws.

In conjunction with its recommendation of a bill embodying the Uniform Probate Code, the Committee is also recommending a current resolution for a continuing study by the Legislative Council, of the Code. Because the Committee is recommending a July 1, 1975, effective date, it believes that this study should be carried on regardless of whether the bill passes or fails.

Due to the length of the bill recommended, only a brief summary of its high points will be presented in this report.

As previously noted, the Uniform Probate Code, as originally drafted, envisions that jurisdiction over probate affairs would be vested in a court of general jurisdiction. This is not possible in North Dakota under current constitutional provisions establishing the jurisdiction of the county courts. Therefore, the bill recommended by the Committee vests jurisdiction over trusts, whether testamentary or inter vivos, in the district court. The remaining functions relating to probate and guardianship are vested in the county courts, or county courts with increased jurisdiction. Essentially, this is the way jurisdiction is split under present law.

Perhaps the major difference between the Uniform Probate Code and current North Dakota probate procedure is the change in emphasis regarding probate proceedings. Present North Dakota law is essentially designed to create an adversary atmosphere in probate proceedings, with the personal representative required to justify and have most of his actions approved by the court. Under the Probate Code, the personal representative would proceed in the manner he reasonably deemed fit, and his action would not require court approval unless a party interested in the estate, or the court itself, deemed it necessary that the personal representative be supervised in his administration of the estate.

The Probate Code, as drafted by the National Conference of Commissioners on Uniform State Laws, provides that the general jurisdiction court, envisioned by the Code, can appoint a registrar to serve as the person responsible for overall supervision of personal representatives. The registrar, as envisioned by the Code, would not have to be an attorney. The Committee bill does not provide for the office of Registrar, since the current office of county judge is equivalent in responsibility to the office of registrar. The State Bar committee studying the Probate Code recommended that judges of county courts with increased jurisdiction be allowed to appoint registrars, but this recommendation was received after the Committes had accepted the bill draft.

In regard to administration of decedents' estates, the Code permits informal administration without any resort to the probate court after the decedent's will, if any, has been admitted to probate, or letters of administration, in the case of an intestate decedent, have been granted. However, judicial proceedings will be freely available to settle disputed matters or to protect the "personal representative" where protection is desired.

In North Dakota, the probate court presently supervises the administration of an estate, issuing orders allowing the sale of assets, allowing the payment of debts, and allowing the settling of accounts and distribution of estate assets. Under the Code, the fiduciary would handle these matters informally without court order, provided the parties interested in the estate are all adults and will approve the fiduciary's account and release the fiduciary from liability.

However, the fiduciary or any party interested in the estate has the option to apply for formal probate which would require notice to distributees of the estate and creditors of all major actions contemplated. Furthermore, on receipt of a petition requesting it, the probate court may order supervised administration in cases where it feels judicial supervision is necessary. If supervised administration is ordered, the personal representative of the decedent still retains broad powers to perform all steps necessary to collect, liquidate, and manage the decedent's estate, but cannot make distribution of the estate assets.

The law of intestate succession is simplified under the Code. The drafters of the Code indicate that they believe the intestate succession provisions will approximate the desires of a decedent in the great majority of cases. Examples of the order of intestate succession provided include provision that a surviving spouse take the entire estate of the decedent if there are no children of the marriage, and the decedent's parents are dead. If there are children of the marriage, or the decedent's parent or parents are living, the surviving spouse takes the first $50,000 in estate asset value, and 50 percent of the remaining balance.

In order to inherit from a decedent, an heir must survive him by at least five days. This provision is to take care of the situation where persons who might inherit from each other are fatally

injured in a common disaster, or otherwise die in close temporal proximity to each other. Current North Dakota law provides that where there is no evidence that two persons who could inherit from each other died other than simultaneously, their property is to be disposed of as if each had survived, except where an insured and his beneficiary die simultaneously, in which case the policy proceeds are to be distributed as if the insured had survived.

The Code also simplifies the formalities of execution of a will, and the age at which a testator can make his will is lowered to 18. Signature in the presence of two witnesses is all that is required, and the witnesses need not sign in the presence of each other, but only in the presence of the testator.

In addition, the Code provides for a "self-proved will". To self-prove a will, the testator and the two witnesses execute an affidavit, after execution of the will, stating that all the formalities of execution have been complied with. When a will has been self-proved, it may be admitted to probate without the testimony of the subscribing witnesses. The Code also provides for automatic revocation of those provisions contained in a will which relate to a former spouse where the marriage relationship with that spouse has been ended by annulment or divorce.

The Code makes provision for the surviving spouse to elect to take against the will of the deceased spouse. This would be a new provision in North Dakota law. Presently, a North Dakota decedent can totally disinherit his surviving spouse. Under the Code, the surviving spouse is entitled to one-third of the "augmented estate". "Augmented estate" is defined as the estate reduced by funeral and administration expenses, homestead, family allowances and exemptions, and creditors' claims; and increased by property given by the decedent to the surviving spouse or property to which she was entitled as a joint survivor. The spouse can elect to take this share even though the decedent's will provides for her, if the elective share would be greater than the amount provided by the will.

The Code provides that the personal representative of a decedent is to publish a notice to creditors, once each week for three successive weeks, requiring creditors to present claims within four months from the date of first publication. If the notice is duly published, creditors' claims are barred after four months from the date of first publication. If the notice is not published, creditors' claims are not barred until three years after the decedent's death. However, liens and mortgages may be foreclosed regardless of the passage of the four-month period, and an action to establish tort liability of the decedent may also be carried on to the extent that he is protected by liability insurance. However, the liability of the estate for previous torts of the decedent is limited to the amount of his liability insurance protection.

Filing of a creditors' claim is simplified because all that is required is a written statement indicating its basis, the name and address of the claimant, and the amount due. The claim may be delivered to the personal representative in person or by mail. If the personal representative disallows the claim or intends to ask a court whether it should be allowed, he must notify the creditor of that fact.

If the personal representative has published the notice to creditors required, he may, at the end of the four-month period, pay all claims received without a court order allowing him to do so.

In most cases, the Code will make ancillary (foreign) administration of a decedent's estate unnecessary. If ancillary probate in a state in which the decedent was not a resident is requested, the decedent's local personal representative is given priority for appointment as the ancillary representative. The Code also provides for removal of a nonresident representative who happens to get appointed before a local personal representative is appointed. In that case, the local personal representative can be appointed in place of the removed foreign personal representative.

In regard to protection of minors and other persons under disability, the Code makes a distinction based on whether the protection is of the person, or of his estate. In cases where a person is appointed to protect a disabled person's estate, the person appointed will be called a "conservator". If the disabled person is to be protected, the person appointed to do so is called a "guardian".

A guardian has very limited authority over the minor or incompetent person's estate, and generally may only expend funds for the support and maintenance of the protected person. If the protected person has a sizeable estate which requires management, the guardian or any other interested party may apply for appointment of a conservator. If a conservator is appointed, he may exercise, without court order, broad management powers over the estate similar to management powers generally given to trustees.

If a person has executed a power of attorney, he can insert language in the power of attorney

which continues its effectiveness after he may be found incompetent. In that case, the holder of the power of attorney can manage his estate to the extent authorized by the power of attorney, and a conservator need not be appointed. If a conservator is appointed, however, he may revoke the power of attorney on behalf of the principle.

The Code provides for registration of trusts where the principal place of administration of the trust is in this State. This is a new provision not currently contained in North Dakota law. Trust registration would be in the district court with jurisdiction where the trustee administering the trust has his or its principal place of business. Once a trust has been registered, the beneficiaries of the trust become subject to the jurisdiction of the court where registration occurred, if notice of registration has been given to them. A trustee's final accounting may be settled either informally or judicially. Accounting proceedings may be initiated in the court by petition of a trustee or beneficiary. Informal accounting may be accomplished by consent, whereby all of the beneficiaries consent in writing to the accounting presented to them by the trustee.

A final note should be made regarding the Code's provisions for compensation of personal representatives and attorneys. The Code provides that the personal representatives may fix not only their own fees, but the fees of their attorneys and other necessary agents. This differs from current law which sets the compensation of administrators and executors (if the latter is not provided for by the will) at certain percentages of the value of the estate. In addition, current provision for payment of attorneys who represent personal representatives is based on a minimum fee schedule established by the Bar Association.

If any person interested in the estate challenges the reasonableness of the compensation paid to a personal representative, or to an attorney or other agent, the court may review the payment decisions. If the court finds that a person has received excessive compensation, that person may be directed to refund to the estate.

Because of its responsibility in the field of intergovernmental cooperation, the Committee was asked to consider a problem relating to the licensure of foreign doctors under rules of the Medical Examining Board.

A doctor from Great Britain, who had agreed to practice in Tioga, was refused a temporary license under a regulation of the Board. The regulation, which became effective on July 1, 1971, provides that only foreign doctors trained in Canada are eligible for temporary licenses.

The Committee heard testimony from several persons requesting that the Board modify that regulation so as to allow temporary licensing of British-trained doctors, as was allowed prior to July 1, 1971. Testimony from members of the Board and its Executive Secretary was also heard. After the hearing, the Committee urged that temporary licenses be granted by the Board, with notification to the temporary licensee that he must pass the state medical examination soon after receipt of the temporary license.

Later, the Committee learned that the Board had informally agreed to relax the rigidity of its regulation against temporary licensure, and to review future applications for such licensure on a case-by-case basis.

NATURAL RESOURCES

Senate Concurrent Resolution No. 4035 directed the Legislative Council to study and revise the State's game and fish laws. The resolution directed the removal of archaic and unused sections, reconciliation of conflicts and ambiguities, elimination of surplus language, and arrangement of the material in a logical and easily understood order.

Senate Concurrent Resolution No. 4066 directed the Legislative Council to study the feasibility of dividing the entire State into watersheds or other geographic areas and establishing, by statute, local legal entities similar to the existing water management districts within each watershed or geographic area. The resolution provided that the study could also include a review of Chapter 61-16 of the North Dakota Century Code for the purpose of updating and making more efficient the powers and duties of a water management district's board of commissioners.

These studies were assigned to the Legislative Council's interim Committee on Natural Resources consisting of Senators L. D. Christensen, Chairman, J. Garvin Jacobson, Guy Larson, Leland Roen, Robert L. Stroup, and Clark Van Horn; and Representatives Lawrence Dick, M. E. Glaspey, Virgil Haman, Frank Shablow, A. L. Ulvedahl, Jerome Walsh, and Francis E. Weber.

In addition to the studies listed above, the Committee considered the question of state agency sales of state land which has high public recreational and ecological value.

The report of the Committee on Natural Resources was submitted to the Legislative Council at the biennial meeting of the Council held at Camp Grafton. The report and recommended legislation were adopted for submission to the Forty-third Legislative Assembly by the Legislative Council in November 1972.

GAME AND FISH LAW REVISION STUDY

The resolution clearly indicated the study and revision of game and fish laws was not to include substantive matters, but to revise and rearrange existing laws and to remove unused and archaic sections. Committee work was confined to these revisions. Changes that would substantively affect the laws were avoided.

The Committee has prepared and recommends the adoption of a bill to create and enact Sections 4-01-17.1, 4-01-17.2, 4-01-17.3, 11-11-57, 11-11-57.1, 11-27-09.1, and Title 20.1; to amend and reenact Sections 12-18-07 and 47-27-03; and to repeal Chapter 61-27 and Title 20 of the North Dakota Century Code.

Proposed Sections 4-01-17.1, 4-01-17.2, and 4-01-17.3 are currently Sections 20-16-01, 20-16-02, and 20-16-03 which provide that the Commissioner of Agriculture may cooperate with the Bureau of Sport Fisheries and Wildlife in the control and destruction of predatory animals, destructive birds, and injurious field rodents. Chapter 4-01 is entitled "Commissioner of Agriculture and Labor".

Proposed Sections 11-11-57 and 11-11-57.1 are currently Sections 20-16-04 and 20-16-05 which provide that boards of county commissioners may cooperate with the Commissioner of Agriculture and the Bureau of Sport Fisheries and Wildlife in predatory animal and injurious rodent control. Chapter 11-11 is entitled "Board of County Commissioners".

Proposed Section 11-27-09.1, currently Section 20-01-29, provides for allocation, within the county, of funds received from the Federal Government in payment for lands taken by the Federal Government for game and fish management purposes. Chapter 11-27 is entitled "Transfer of County Property".

Proposed Title 20.1 would include the edited and rearranged game and fish laws currently contained in Title 20, "Game, Fish and Predators", and Chapter 61-27, "Boating Regulations", except those sections the Committee proposes to transfer to other areas of the Code, and unused and archaic laws which would be deleted. The Committee included Chapter 61-27 in proposed Title 20.1 because the Game and Fish Department is responsible for administering and enforcing this chapter.

Title 20.1, as recommended by the Committee, would include a uniform penalty section for each chapter which would be effective unless a specific penalty is stated within a section of that chapter. Such items as license fees and the powers and duties of the Game and Fish Commissioner have been brought together from scattered spots throughout the Code. The Committee attempted to update the language and definitions contained in the proposed legislation. The following list is

a cross-reference between current and proposed sections of North Dakota game and fish laws:

Proposed Section	Current Section	Derived From
20.1-01-01	20-01-24	
20.1-01-02	20-01-01	20-17-01
		61-27-01
20.1-01-03	20-01-02	
20.1-01-04	20-01-03	
20.1-01-05	20-01-04	
20.1-01-06	20-01-04.1	
20.1-01-07	20-01-04.2	
20.1-01-08	20-01-05	
20.1-01-09	20-01-05.1	
20.1-01-10	20-01-06	
20.1-01-11	20-01-07	
20.1-01-12	20-01-09	
20.1-01-13	20-01-11	
20.1-01-14	20-01-12	
20.1-01-15	20-01-13	
20.1-01-16	20-01-14	
20.1-01-17	20-01-15	
	20-01-16	
20.1-01-18	20-01-17	
20.1-01-19	20-01-19	
20.1-01-20	20-01-20	
20.1-01-21	20-01-21	
20.1-01-22	20-01-17.1	
20.1-01-23		47-27-03
20.1-01-24	20-01-22	
20.1-01-25	20-11-14	
20.1-01-26	20-03-37	
20.1-02-01	20-02-01	
20.1-02-02	20-02-02	
20.1-02-03	20-02-03	
20.1-02-04	20-02-04	
20.1-02-05	20-02-05	20-16-01
		20-02-09
	20-02-22	20-02-12
	20-01-25	20-16-01
	20-01-30	
	20-03-05	
	20-01-28	
20.1-02-06	20-02-06	
20.1-02-07	20-02-23	
20.1-02-07	20-02-24	
20.1-02-09	20-02-10	
20.1-02-10	20-02-13	
20.1-02-11	20-02-14	
20.1-02-12	20-02-24	
20.1-02-13	20-02-15	
20.1-02-14	20-02-16	
20.1-02-15	20-02-17	
20.1-02-16	20-02-19	
20.1-02-17	20-02-20	
	20-11-12	
20.1-02-18	20-11-13	
20.1-02-19	20-02-25	
20.1-02-20	20-02-26	
20.1-02-21	20-02-27	
20.1-02-22	20-02-28	
20.1-02-23	20-02-29	
20.1-02-24	20-02-30	
20.1-02-25	20-02-31	
20.1-03-01		20-01-24
20.1-03-02	20-03-01.1	
20.1-03-03	20-03-01	
20.1-03-04	20-03-02	20-03-05
20.1-03-05	20-03-03	
20.1-03-06	20-03-04	
	20-03-40	
20.1-03-07	20-03-06	
20.1-03-08	20-03-07	
20.1-03-09	20-03-08	
20.1-03-10	20-03-09	
	20-03-39	
20.1-03-11	20-03-10	
20.1-03-12	20-03-12	20-03-25
	20-03-10	20-03-13
	20-03-01.1	
	20-03-25	
	20-03-19	
	20-03-29	
	20-01-27	
	20-08-07	
	20-09-01	
	61-27-03	
	20-06-06	
	20-06-08	
	20-06-10 (2)	
	20-06-11	
	20-06-15	
	20-12-01	
	20-17-02	
20.1-03-13	20-03-13	
20.1-03-14	20-03-18	
20.1-03-15	20-03-19	
20.1-03-16	20-03-20	
20.1-03-17	20-03-21	
20.1-03-18	20-03-22	
20.1-03-19	20-03-23	
20.1-03-20	20-03-24	
20.1-03-21	20-03-38	
20.1-03-22	20-03-25	
20.1-03-23	20-03-26	
20.1-03-24	20-03-27	
20.1-03-25	20-03-28	
	20-03-28.1	
20.1-03-26	20-03-41	
20.1-03-27	20-03-33	
20.1-03-28	20-03-34	
20.1-03-29	20-03-35	
20.1-03-30	20-03-35.1	
20.1-03-31	20-03-36	
20.1-04-01		20-01-24
20.1-04-02	20-04-01	

Proposed Section	Current Section	Derived From
20.1-04-03	20-04-10	
20.1-04-04	20-04-12	
20.1-04-05	20-04-10.1	
20.1-04-06	20-04-04	
20.1-04-07	20-08-07	
20.1-04-08	20-05-05	
20.1-04-09	20-04-05	
20.1-04-10	20-04-06	
20.1-04-11	20-04-07	
20.1-04-12	20-04-09	
20.1-04-13	20-04-11	
20.1-05-01		20-01-24
20.1-05-02	20-05-01	
20.1-05-03	20-05-02	
20.1-05-04	20-05-03	
20.1-05-05	20-05-06	
20.1-05-06	20-05-05	
20.1-05-07	20-05-07	
20.1-06-01		20-01-24
20.1-06-02	20-06-01	20-06-02
20.1-06-03		20-06-03
20.1-06-04	20-06-05	
20.1-06-05	20-06-06	
20.1-06-06	20-06-07	
20.1-06-07	20-06-08	
20.1-06-08	20-06-04.1	
20.1-06-09	20-06-09	
20.1-06-10	20-06-10	
20.1-06-11		20-06-03
20.1-06-12	20-06-15	
20.1-06-13		20-07-01
20.1-06-14	20-06-11	
20.1-06-15	20-06-12	
20.1-06-16	20-06-14	
20.1-06-17		20-12-01
20.1-07-01		20-01-24
20.1-07-02	20-07-01	
20.1-07-03	20-07-02	
20.1-07-04	20-07-04	
20.1-07-05	20-07-05	
20.1-07-06	20-07-21	
20.1-08-01		20-08-05 20-01-24
20.1-08-02	20-08-01	
20.1-08-03	20-08-02	
20.1-08-04	20-08-03	
20.1-08-05	20-08-04	
20.1-09-01		20-01-24
20.1-09-02		20-09-01
20.1-09-03	20-09-02	
20.1-09-04	20-09-03	
20.1-09-05	20-09-04	
20.1-10-01	20-10-01	
20.1-10-02	20-10-02	
20.1-10-03	20-10-03	
20.1-10-04	20-10-04	
20.1-10-05	20-10-05	
20.1-10-06	20-10-06	
20.1-10-07	20-10-07	
20.1-11-01		20-01-24
20.1-11-02	20-11-01	
20.1-11-03	20-11-02	
20.1-11-04	20-11-04	
20.1-11-05	20-11-04.1	
20.1-11-06	20-11-08	
20.1-11-07	20-11-07	
20.1-11-08	20-11-09	
20.1-11-09	20-11-10	
20.1-11-10	20-11-06	
20.1-11-11	20-11-06.1	
20.1-11-12	20-11-03	
20.1-11-13	20-11-11	
20.1-12-01		20-01-24
20.1-12-02	20-17-02	
20.1-12-03	20-17-03	
20.1-12-04	20-17-04	
20.1-12-05	20-17-05	
20.1-12-06	20-17-06	
20.1-12-07	20-17-07	
20.1-12-08	20-17-08	
20.1-12-09	20-17-10	
20.1-12-10	20-17-11	
20.1-13-01		20-01-24
20.1-13-02	61-27-02	
20.1-13-03	61-27-03	
20.1-13-04	20-01-27	
20.1-13-05	61-27-04	
20.1-13-06	61-27-05	
20.1-13-07	61-27-06	
20.1-13-08	61-27-07	
20.1-13-09	61-27-08	
20.1-13-10	61-27-09	
20.1-13-11	61-27-10	
20.1-13-12	61-27-11	
20.1-13-13	61-27-12	
20.1-13-14	61-27-13	
4-01-17.1	20-16-01	
4-01-17.2	20-16-02	
4-01-17.3	20-16-03	
11-11-57	20-16-04	
11-11-57.1	20-16-05	
11-27-09.1	20-01-29	
12-18-07	12-18-07	
47-27-03	47-27-03	

The Committee recommends the following deletions from current game and fish laws:

Proposed Deletion	Title	Reasons for Proposed Deletion
Subsection 7 of Section 20-01-01	Definition of game animals	Obsolete
Section 20-01-10	When aliens not to hunt or take wild birds or animals	Obsolete
Section 20-01-23	Resisting or obstructing officers in discharge of their duties unlawful	Covered in Sections 12-08-19 through 12-08-21
Section 20-02-09	Compensation and expenses of chief game warden	Obsolete — currently a line item
Section 20-02-12	Compensation and expenses of district deputy game wardens	Obsolete — currently a line item
Section 20-02-18	Hindering, obstructing, or refusing inspection is a misdemeanor	Covered in Sections 12-08-19 through 12-08-21
Section 20-02-21	Garrison Dam planting program	Obsolete
Section 20-03-30	Permits authorizing possession of game or fish after clcse of season-tagging required	Obsolete
Section 20-03-31	Applications for possession permits — when made possession lawful while application pending	Obsolete
Section 20-03-32	Game or fish may be held after close of season only under permit and when tagged	Obsolete
Section 20-04-02	Statutory seasons for hunting game birds — subject to change by proclamation	Obsolete
Section 20-04-03	Bag limits on game birds	Obsolete — may be contrary to federal regulations
Sections 20-09-05 through 20-09-17	Pertaining to muskrat farms	Obsolete
Chapter 20-14	Bounties on predatory birds	Obsolete
Section 20-16-06	Tax levy on sheep for predatory animal fund	Obsolete — Attorney General's opinion that such tax cannot be assessed or collected

The Committee recommends that Section 12-18-07, "Laying Out Poison — Punishment — Exception", and Section 47-27-03, relating to the penalty for failing to close fence gates, be amended by deleting provisions which would be transferred to proposed Title 20.1.

The Committee expresses its appreciation to State Game and Fish Department personnel for professional advice received during the course of this study.

WATER MANAGEMENT DISTRICT STUDY

Water management districts are the only governmental entities which can deal with all aspects of water management. These districts provide a legal entity through which citizens can provide for the planning, development, and control of water resources in their area. Not all areas in North Dakota are included within a water management district, thereby denying such areas the benefits a water management district may provide.

The study resolution referred to present law which allows the establishment of a water management district of any geographic size or shape, which has resulted in districts ranging in size from a single township to an entire county. Currently, there are 51 water management districts in North Dakota. Thirty-eight of these are organized on a countywide basis. Five counties have more than one water management district within their boundaries.

The study resolution also stated that water-related problems and projects usually involve an entire watershed and ignore the artificial political boundaries of the water management district.

Watershed boundaries seldom coincide with county lines, and testimony offered the Committee by several individuals concerned with water management in the State, including the State Water Commission, indicated that, while watershed divisions might be desirable, they would create administrative and financial difficulties because of the many political subdivision borders they would cross. The State Water Commission also emphasized that to organize a watershed-shaped district, it is first necessary to define it. Starting with the major basins such as those of the Souris, the Red, and the Missouri, which are now covered by basin agencies for general planning, the subdivision of the State into sub-watersheds within these major basins could be carried to where drainage areas (i.e., watersheds) can be outlined to contain less than a township within each hydrologic unit in the western portion.

In the central portion, where problems of drainage are becoming more prevalent, watershed definition would have to involve anticipation of spillage from noncontributing areas, since much of the natural drainage is undeveloped or practically nonexistent.

In the flat area of the Red River Valley, watersheds would have to be arbitrarily defined, since the vast majority of the area is either artificially drained or without adequate drainage from natural channels because of spillover from outside of what may appear to be a natural watershed boundary.

Due to the importance of water and the need to use and manage this valuable resource as beneficially as possible, the Committee recommends legislation requiring that all land in North Dakota be within water management districts no smaller than countywide in size by July 1, 1974. Although most land is now within one of the countywide water management districts, there are a few counties with no districts and some counties with one or more smaller districts. The State Water Commission would have authority, under the proposed legislation, to create districts in the areas where there are none, or where present districts are smaller than countywide in size.

The proposed legislation also provides a means whereby two or more countywide water management districts could consolidate. For example, several counties whose boundaries approximate a given watershed area could consolidate into a single water management district, enhancing their ability to solve water-related problems on a watershed basis.

The Committee recommends repeal of the current law providing for dissolution of a water management district, but proposes legislation providing for the division of a water management district consisting of two or more counties into two or more districts, the boundaries of which would coincide with county lines.

The Committee proposes an amendment to Section 61-16-18 providing that any dam or water control device or flood control project constructed by or with the assistance of any federal agency, which has no one responsible for it, shall become the responsibility of the water management district where it is located. The water management district may take any action concerning this dam or water control device it deems necessary.

The Committee also proposes legislation changing the compensation for water management district board members from $15 to $20 per day while performing board duties, and that they receive the same allowance for meals and lodging as state employees. The Committee concluded that water management district board members should receive compensation and expenses similar to that received by members of other boards.

RETENTION OF STATE LANDS WITH HIGH PUBLIC VALUE

The Committee listened to presentations from several state officials and state agencies regarding the sale of state land with high public value. The Committee also discussed Senate Concurrent Resolution No. 4087 pertaining to state land leasing policies. In the joint resolution, the 1971 Legislative Assembly recognized and strongly endorsed the need to preserve certain scenic, recreational, and conservational lands in North Dakota. It urged state agencies which control and manage state lands to determine the lands which have

these values, to withhold these lands from sale, and to lease them instead.

The Board of University and School Lands has placed a moratorium on the sale of state school lands which have high recreational, wildlife, or water impoundment value. The moratorium is in effect for about a year to allow the 1973 Legislature to review the situation. Land tracts withheld from sale to private individuals were selected on the basis of a preliminary report by the State Game and Fish Department which classified board of university and school land as:

1. Acquire	Very high public value
2. Retain	Potential to be quite valuable to future generations, should be re-evaluated in near future
3. Low Value	Low public value

The study resulted in classification of 28.5 percent of the approximately 800,000 acres of university and school lands in the acquire category and 49.4 percent in the retain category. Witnesses before the Committee suggested agricultural interests were not adequately considered in the Game and Fish Department report, and that, because the report was a preliminary one, a more in-depth analysis should be conducted.

The Committee recommends a bill that would withhold from sale, except to a public agency or state political subdivision, all lands under control of the Board of University and School Lands, until the Outdoor Recreation Agency has completed a study to determine which tracts of land have exceptional public value. Land retention would be based on exceptional scenic, archaeological, historical, recreational, conservational, or wildlife enhancement value. Upon completion of the study, only those tracts of land placed on a retain list would continue to be withheld from sale, except that such lands could be sold to a public agency or state political subdivision.

POLITICAL SUBDIVISIONS

The Legislative Council's 1971-73 interim Committee on Political Subdivisions was directed by the 1971 Legislature to conduct two studies. One study concerned boards of budget review and the other dealt with buried transmission facilities.

Senate Concurrent Resolution No. 4033 (1971 Legislature) directed the Legislative Council "to give consideration to remedying the conflicts which arise between boards of budget review and the county auditors and governing bodies . . . " The study resolution went on to direct the Council to either recommend abolishing the boards or to amend or create new law enabling the boards to carry out and enforce their proper functions.

Senate Concurrent Resolution No. 4042 (1971 Legislature) directed the Council to study "the problems of buried transmission lines and how best to protect them from damage". The resolution also directed attention to the problems involved in giving notice of the exact location of buried transmission facilities, on how best to protect them, and how to fix liability for the damage of such facilities.

The 1971-73 interim Committee on Political Subdivisions was chaired by Senator George Rait. The other Committee members were Senators Ben Gustafson, and Ernest Pyle and Representatives James Gerl, Alvin Hausauer, Halvor Rolfsrud, Joe Welder, Carl White, and Ralph Winge.

The report of the Committee on Political Subdivisions was submited to the Legislative Council at the biennial meeting of the Council held at Camp Grafton. The report and recommended legislation were adopted for submission to the Forty-third Legislative Assembly by the Legislative Council in November 1972.

Boards of Budget Review

The board of budget review study presented problems concerning conflicts between the statutory authority of various political bodies and elected officers, as well as basic decisions on the wisdom of having an appointed board rule on budgets submitted by elected boards and officials.

Statutes governing boards of budget review are mainly found in Chapter 40-41 of the North Dakota Century Code. The basic chapter was enacted in 1933. Every city is required to have a board of budget review. The seven-member board consists of two members from the city's governing body, two members from the school board, one member from the park board, and two members representing the public at large.

The governing bodies appoint their representatives to the board annually by July 15. The board then meets between that time and July 20 to organize and to appoint the members at large.

Cities, and park and school boards must submit annual preliminary budgets to their boards of budget review for approval before the budgets are finally adopted. Boards of budget review may approve them, disapprove them, or modify them. One of the difficulties the Committee found built into this law, however, is that this review must be completed by the fourth Wednesday in July, or within 10 days of that date. Using 1971 as an example, this only gave the boards for July 20 to August 5 to review and examine all of the budgets.

The purposes for boards of budget review are found in Section 40-41-05. They are to take an overview of all three budgets and to judge the total impact for taxpayers.

Boards of budget review must certify the budgets to the county auditor before any tax levies can be spread. The boards must also approve all bond issues and debt limit increases for the political subdivisions under them. The boards are to hold public hearings on the budgets and other matters they consider.

Section 40-40-11 requires a county auditor to calculate the necessary tax rates to produce the amount called for in the final budgets. If this can't be done within the legal tax rates, the auditor may reduce the amount so it can be produced within legal limitations. The difficulties and problems which prompted the study resolution arise, according to the resolution, "because of the apparent lack of enforcement power in the board of budget review law or a void in both said statutory provisions to recognize a need for flexibility therein in order to resolve emergency situations".

Conflicts With Auditor

Testimony at the Committee's first meeting brought out a built-in statutory conflict between boards of budget review and county auditors. Section 21-03-15 directs cities issuing bonds under

Chapter 21-03 to levy a direct annual tax to pay the interest on the bonds. This tax cannot be repealed. After the issuance of such bonds, the tax or levy is to be collected yearly. If a governing body submitted a budget to a board of budget review and had it reduced, the governing body could still request a larger levy be spread by the county auditor to cover the levy required under Section 21-03-15. Or, if the county auditor discovered that the levy submitted by the governing body was not sufficient to cover the tax required under Section 21-03-15, he could increase the levy.

In either case, these actions can be, and are taken by the county auditor without the approval, or even over the objections of the board of budget review.

The study resolution noted that "incidents continue to arise where preliminary budgets are submitted to, and approved by, boards of budget review, and thereafter for various reasons the county auditors nevertheless spread a larger levy pursuant to requests for an increased budget by the governing bodies".

Concept Sound

At the Committee's first meeting it heard testimony from representatives of the North Dakota League of Cities, the North Dakota County Auditors' Association, and city auditors that the board of budget review concept was sound, but that laws concerning the boards are weak and need strengthening. The primary faults cited were a lack of time to consider budgets running into the millions of dollars, the majority held on the board by the governing bodies under the board, and the one-year term of board members.

It was also suggested that the law spell out clearly that the board action on a budget should be considered as final. Several witnesses said the law should state that if a county auditor determines it is necessary to increase a levy over a requested amount, the proposed budget should be sent back to the board of budget review for further study rather than allowing a higher levy to go out without the board's approval.

The Committee believes it would be better, for planning and evaluation purposes, if boards of budget review could meet and consider the budgets after the State Board of Equalization met and set its final evaluations. Under the present arrangement, the State Board of Equalization meets after final board of budget review consideration. This forces many budget requests to be made on an estimate of what the evaluation will be, and causes many adjustments once the final evaluation figures are announced.

The Committee considered legislation moving ahead the meeting dates of the various equalization boards approximately one to two months. However, the Legislative Council's Committee on Finance and Taxation is recommending a similar bill, so the Committee on Political Subdivisions deferred to the Committee on Finance and Taxation on this matter.

Retain or Abolish Boards

The Committee heard an entirely different view of boards of budget review from witnesses at its second meeting. These witnesses, representing city officials, school boards, and boards of budget review, said basically that there was no need or useful purpose for boards of budget review and that they should be abolished. The sense of the testimony was that an appointed board should not have the final say on budgets prepared by elected officials. The boards, they said, if retained at all, should serve simply as public information vehicles between the budgetmakers and the general citizenry.

However, some of these witnesses also conceded that a board of budget review could play an important role in coordinating the three separate budgets so that severe demands by all three political subdivisions upon the county levy would not be made at the same time.

The question before the Committee boiled down to a choice of either abolishing boards of budget review or retaining and strengthening them. Most of the witnesses who appeared before the Committee agreed that the boards are not serving their purposes under the present law. The Committee decided to recommend the retention of the boards and to attempt to strengthen them through longer and staggered terms, majority membership by "the consumers", compensation for board members, requirements that at least two of the board members have some experience or knowledge of accounting and budgeting procedures, more time to consider the budgets, and clear language that the boards are to have the final say on the budgets.

Budget Review Recommendations

The Committee, in its proposed bill, is recommending:

In Section 1: A method to appoint new mem-

bers to boards of budget review for three-year, staggered terms.

In Section 2: Eliminating the requirement in Section 40-24-10 that a city receive board approval before holding an election to raise its debt limit.

In Section 3: Changing from "between July 1 and July 25" to "by the fourth Wednesday in July" the date by which a city has to have its preliminary budget prepared under Section 40-40-04.

In Section 4: Changing from "on the first Wednesday in August" to "by the fourth Wednesday in August" the date by which the city has to adopt its final budget and make its annual tax levy under Section 40-40-06 (2).

In Section 5: Changing the tax levy date in Section 40-40-09 for cities to match changes made in Section 4.

In Section 6: Requiring the county auditor, when he finds requested levies cannot be produced by a legal tax rate, under Section 40-40-11, to return the levy to the board of budget review so it can reduce the request. The county auditor now reduces the request. The Committee believes a board of budget review should have the final say on these budgets.

In Section 7: Changing the composition of boards of budget review, under Section 40-41-01, to give the majority to members representing the public at large. Boards currently consist of two members from a city's governing body, two members from the local school board, one member from the park board, and two representatives of the public at large. The Committee recommends a board consisting of one member representing a city's governing body, one member representing the school board, one member representing the park board, and four members representing the public at large. This section also deletes reference to the boards' approving bond issues before they are voted upon.

In Section 8: Changing from "on or before the 15th day of July" to "on or before the 15th day of January" the date by which political subdivisions must appoint their representatives to serve on the boards of budget review and changing board terms from one year to three years. At present, under Section 40-41-02, the at-large board members are chosen by the other board members. This section would have the city and the school board each selecting two of the at-large members, with at least two of the four at-large members having some experience in accounting, budgeting, management, economics, or a similar field. This section would prohibit any of the at-large members from being elected or appointed city officials, or members of the governing bodies or employees of any of the political subdivisions whose budgets are considered by boards of budget review.

In Section 9: Amending Section 40-41-03 to compensate board of budget review members in the same manner as school board members. This would mean pay of $10 per meeting plus mileage at 8½ cents per mile. The political subdivision appointing the board member would be responsible for his compensation. The Committee believes this would create stronger boards. Under its recommendations, the Committee also recognizes that boards of budget review will be meeting longer and more often.

In Section 10: Requiring boards to meet between their organizational session in January and July 1st of each year with representatives of the political subdivisions to discuss and review their fiscal and budgetary problems and plans. The boards now are not required to hold meetings until they begin to consider the preliminary budgets in July. However, testimony before the Committee indicated that some boards, on their own, are meeting earlier than July with the various political subdivisions to consider budgetary problems.

In Section 11: Amending Section 40-41-04 to require the political subdivisions to submit their preliminary budgets to boards of budget review "by the fourth Wednesday in July, or within five days thereafter". In this section, references to the boards' approving bond issues are deleted and authority is given to the boards to review and examine in detail the "line" items of each preliminary budget. The Committee believed that to do a proper job, the boards should have the power to examine and to approve, disapprove, or modify line items in a preliminary budget. On August 9, 1971, an Attorney General's opinion said that boards of budget review could approve or disapprove budget totals in particular categories, but could not reduce or eliminate specific items. If a board eliminated a specific item, suggested the opinion, the subdivision could still fund or retain that item as long as the total budget in that category did not exceed the limit set by the board of budget review.

In Section 12: Amending Section 40-41-05 to give the boards authority over line items in the preliminary budgets. This section also re-emphasizes that when a county auditor directs changes in the levy requests, then the levy requests shall be returned to the board of budget review for fur-

ther consideration. This section would also require the boards to publish an estimate of the increase or decrease over the prior year's budgets, and any consequent tax increase or decrease, caused by its actions.

In Sections 13 and 14: Amending Sections 40-41-07 and 40-61-10 (2) to delete references to boards' approving bond issues.

In Section 15: Amending Section 57-15-02 to again provide that, when a city requests more than the legal tax rate will produce, the county auditor shall return the levy to the board for the necessary changes. The law now allows a county auditor to extend only the levy the legal rate will produce.

In Sections 16, 17, and 18: Amending Sections 57-15-07, 57-15-11, and 57-15-13 to have city, park district, and school district taxes levied at a uniform time, "by the fourth Wednesday in August". The times were not uniform previously.

In Section 19: Repealing Section 40-41-06 requiring boards of budget review to approve bond issues of cities, park boards, and school districts before they are put before the voters. The Committee believed this should be deleted for two reasons. First, a 1956 North Dakota Supreme Court decision said that, in a case where a bond issue was contested after the election as illegal because it was not brought before a board of budget review, the language in Section 40-41-06 should be construed as directory rather than mandatory, and that failure to submit a school bond issue to a board of budget review before the election would not invalidate the election. Secondly, since the entire city, or the patrons of a particular school district or park district, vote on a particular bond issue, the will of the people should be deciding in this manner, and not an appointed board of budget review.

The question of a board of budget review's authority over the budget of a home rule city was brought before the Committee by Professor Lloyd Omdahl, Chairman, Grand Forks Home Rule Charter Commission. He urged abolishment of boards of budget review or, in the alternative, amendments to indicate clearly that the budgets of home rule cities are not subject to board of budget review consideration. This matter was also discussed briefly, with no conclusion, in the aforementioned August 9, 1971, Attorney General's opinion. The Committee decided to make no recommendation concerning this matter.

BURIED TRANSMISSION FACILITY STUDY

The Committee's other study concerned buried transmission facilities. An increasing number of miles of these facilities, such as electric cable, telephone lines, and gas and oil pipelines are being buried in North Dakota. Testimony before the Committee indicated there has been an accompanying increase in damage to these facilities by excavating, blasting, drilling, and similar activities.

Representatives of various utilities told the Committee this damage means not only costly repairs, but also consumer inconvenience through loss of service which cannot always be measured in dollars. They cited, for example, instances where even a short loss of service could mean dire results for hospitals, clinics, other health care facilities, and many manufacturing and business concerns.

After listening to early testimony on the problem, and considering the directives of the study resolution, the Committee decided to devise a system to provide a method of quick and easy notice to excavators and others of the location of buried transmission facilities. It was noted in testimony that a solution probably could not be found by using established filing and recording systems since many easements are never recorded and many excavators do not now and probably would not in the future take the time to search the records for an indication of buried facilities.

Witnesses also urged that any new law give the owners of buried transmission facilities a civil cause of action for damages to these facilities. Because there are now no provisions for notice, buried transmission facility owners generally have no recourse against a person damaging their facilities unless negligence or malicious intent can be shown.

Assisted By Utilities

During the course of its study, the Committee was assisted by a committee composed of representatives of the various public and cooperative utilities in the State. The Committee also heard from representatives of the State Land Improvement Contractors' Association and the State County Register of Deeds' Association.

Representatives of the Land Improvement Contractors' Association said they favored legislation to make it quicker and easier to discover the location of buried transmission facilities. They favored having this information available at the county seats rather than in one central location in the State. A Committee of the County Registers of Deeds' Association said it would be happy to help in providing any service it could in this matter. It noted it would be more convenient for them to

have some easy method of determining the location of these facilities rather than themselves, or the individual contractors and excavators, searching through the records for the location of these facilities.

The County Register of Deeds' Association said it wanted to be sure that, under the provisions of any legislation prepared in this field, a register of deeds would not be held liable for misinformation he gave out. The Committee believed that, except in cases of deliberate or malicious misinformation, the doctrine of governmental immunity would protect registers of deeds.

Committee Recommendation

The Committee, in its proposed bill, is recommending:

In Section 1: That anyone owning or controlling buried transmission facilities, including those buried within the limits of any political subdivisions, shall give written notice thereof to the register of deeds in the county where the facilities are located. This notice shall state the name, address, and telephone number of the owner or person having control of the facilities, and shall contain a description of the location of these facilities by section number, township name if there is one, township number, range number, and city name.

Railroads and the North Dakota State Highway Department would not be required to file this notice for their facilities buried on their rights-of-way. Representatives of both groups appeared before the Committee and asked to be excepted from the bill. Both said their main product, i.e., railroad tracks and highways, give adequate notice that facilities may be buried on the rights-of-way. Permission for any excavating or blasting on these rights-of-way must be obtained from the individual railroads or from the Highway Department. They said that when this permission is obtained, they would locate the facilities.

In Section 2: That a card file system be established in the office of each county register of deeds. This card file, with information furnished by the owners or persons having control of buried facilities, would contain listings of buried facilities located by section, range, and township, and, where applicable, by city. The utilities would send information concerning their buried facilities into the county registers of deeds' offices on these cards. The cards would be designed so that when an excavator calls, for example, and tells the county register of deeds' office that he is planning to dig in a certain section in a certain township, the register of deeds' office can quickly check the information card for that particular township and tell the caller which utility has facilities buried there.

Section 3: That certain procedures be established to determine the location of buried facilities. Any person intending to conduct any digging, grading, leveling, excavating, blasting, or similar activities in a particular area would have to check with the register of deeds' office to see if buried facilities are located there. Then at least three days (not counting Saturdays, Sundays, or legal holidays) before starting the excavation or other activity, he must request the owner of the buried facilities to accurately locate them upon the land where they are situated. Within the three days, and without cost to the excavator, the owner of the facilities must accurately locate them for the excavator.

In Section 4: That when information on the location of the facilities has been filed with the county register of deeds by the owner of the facilities, any person conducting any excavating or similar activities upon the land described on the cards must request an accurate location of the facilities. If he fails to do this, or after having had such facilities accurately located for him, he injures or damages the facilities, he shall be civilly liable for all damages to the facilities and all damages for interruption of service.

Witnesses before the Committee, particularly utility representatives, saw the main goal of this legislation as not so much to fix blame as to get more excavators and similar persons to check for buried facilities before digging. The Committee believes this section puts teeth into the proposed bill by giving utilities and their consumers a clearly defined civil cause of action when the facilities are damaged or injured. This would include damages for loss of service.

In Section 5: That a uniform card, as described in this section, be used by the utilities in furnishing the information on the location of their buried facilities to registers of deeds. This card is designed to be used directly in the card file maintained by registers of deeds to lessen the chance of errors occurring in the transcribing of information. It would be the utilities' duty to see that the information contained on these cards is kept up to date.

The Committee believed its proposed bill provides a quick, easy, and inexpensive method for excavators to learn the location of buried facilities. A test of the card file system in Cass County, conducted by the Industry Committee, indicated it will take just a few dollars and a few hours to set up such a system in each county. The utilities will furnish the cards and the county register of deeds will provide a file to contain them.

REAPPORTIONMENT

The Special Committee on Reapportionment was created by the Chairman of the Legislative Council late in the 1971-73 biennium to study and select one or more reapportionment plans to be submitted for consideration by the 1973 Legislature. Appointed to the Committee were Senators Gail H. Hernett, Chairman, Francis J. Butler, and L. D. Christensen; Representatives Richard J. Backes, Donald Giffey, and I. O. Hensrud; and citizen members Messrs. William Greenagel, Leo Stein, Tom Roney, Ted Hardmeyer, and Ernest Johnson.

The report of the Committee was presented to the Legislative Council at its Camp Grafton meeting and approved in November 1972.

On May 22, 1972, the United States District Court for the District of North Dakota found that the 1965 legislative apportionment plan for the State of North Dakota no longer met constitutional standards, in the light of the 1970 census statistics. The Court determined that changes and shifts in population had created constitutionally impermissible variations in population among the existing legislative districts of North Dakota. A total deviation of 96 percent from equal senatorial representation was determined.

The Court stated that it had attempted to fashion a legislative plan which would cause a minimum of disruption in the election processes for the 1972 primary and general elections. The Court ordered into effect, for the 1972 elections only, a modified version of the plan submitted to the Court by Mr. Richard Dobson, Minot, one of three Special Masters appointed by the Court to assist in formulating and adopting an appropriate reapportionment plan. Although the Court ordered the "modified" Dobson plan into effect, several weaknesses were cited, including a substantial variance in population among legislative districts, an increase in the size of the Legislature, and a continuation of multi-member legislative districts. The size of the Legislature was increased to avoid major change in legislative district boundaries. Also appointed as Special Masters by the Court were Mr. R. R. Smith of Grand Forks and Mr. Thomas K. Ostenson of Fargo.

The Committee on Reapportionment was created due to several requests for an interim study on reapportionment, from individuals in both political parties, and because of the fact that the current legislative apportionment is in effect for the 1972 elections only.

At the organizational meeting, the Committee Chairman stated that the Committee is responsible for selecting one or more reapportionment plans which would be acceptable to the members of the North Dakota Legislature and the Courts. It was noted that it is very difficult for the Legislature to formulate and pass a reapportionment plan during the Legislative Session because of the time limitation.

A memorandum on the legal aspects of redistricting was distributed to Committee members, and is on file in the office of the Legislative Council. Committee staff emphasized several of the important points contained in the memorandum.

The United States Supreme Court in the case of **Reynolds v. Sims,** 377 U. S. 533. (1964) stated that:

> "Population is of necessity, the starting point for consideration and the controlling criterion for judgment in legislative apportionment controversies."

The Court declared some deviation from equally populated districts is constitutionally permissible if the deviation is based on a legitimate state policy. The Court found that a state must make an honest and good faith effort to construct districts which are as nearly as practicable equal in population.

The Court also declared that senate districts, which historically have represented area rather than population, must also be apportioned on a population basis. The Court stated that:

> "We hold, as a basic constitutional standard, the Equal Protection Clause requires that the seats in both Houses of a bicameral State Legislature must be apportioned on a population basis."

In a later case on state redistricting, **Kirkpatrick v. Preisler,** decided by the United States Supreme Court in 1969, the State of Missouri contended that the population variance (3.13 percent above the mathematical ideal to 2.83 percent below the ideal) was so small as to be considered de minimis and thereby satisfied the "as nearly as practicable" standard. The United States Supreme Court rejected this theory by stating:

> "The whole thrust of the 'as nearly as practicable' approach is inconsistent with the

adoption of fixed numerical standards which excuse population variances without regard to the circumstances of each particular case. To consider a certain range of variance de minimis would encourage legislators to strive for that range rather than for equality as nearly as practicable."

The Court in **Kirkpatrick** also stated that history, economic, or other sets of group interest, partisan politics, or geographic compactness standing by themselves are not permissible factors in attempting to justify disparities from population-based representation. Whether deviation would be allowed based on these factors collectively is a highly speculative matter.

The memorandum also referred to decisions regarding multi-member districts. The United States Supreme Court vacated the district court's order, in **Burns v. Richardson,** 384 U. S. 73 (1966), where the Federal District Court had invalidated an apportionment plan adopted by the Hawaii Legislature because of the failure to create single-member districts.

Although the United States Supreme Court has declined to rule a multi-member district unconstitutional per se, a preference was expressed in **Connor v. Johnson** where the Court stated:

"When district courts are forced to fashion apportionment plans, single-member districts are preferable to large multimember districts as a general matter."

The **Connor** opinion does raise some important questions. The words of qualification imply that single-member districting is not mandatory and there is uncertainty as to the exact definition of "large".

Committee members were informed that the Federal District Court in a Memorandum Opinion and Order dated June 29, 1972, stated that:

"We approve the Dobson Plan of reapportionment at this time for the 1972 election only. This court retains jurisdiction of this cause for the purpose of adopting a different plan of reapportionment which will not be hampered by considerations of impending elections. We add a caveat regarding the candidates for state senate filing for a four-year term in the 1972 elections. In the event that we hereafter adopt a different plan of reapportionment which substantially changes the boundaries of legislative districts, it may be necessary to require that all state senators stand for election in 1974."

At the request of the Committee, the Assistant Attorney General submitted an application to the Federal District Court from the Secretary of State on behalf of the State asking that the Court hold in abeyance any further proceedings until the Legislature has had time to act on reapportionment. The Committee received notice that the United States District Court has issued an order which in effect states that the Court will suspend further considerations of the reapportionment matter until a report has been filed by the Attorney General as to action taken by the North Dakota Legislature on the matter of reapportionment. Such report must be filed not later than 20 days after the close of the Legislative Session.

The Committee studied several different reapportionment plans, including eight separate plans submitted to the Federal District Court by the Court-appointed Special Masters and other interested persons. In addition to the eight plans submitted to the Federal District Court, the Committee also studied reapportionment plans formulated by Mr. R. R. Smith, Grand Forks, Representative Donald Moore, Forbes, and Chairman Hernett.

Of the plans submitted to the Federal District Court, the current apportionment plan maintains the integrity of county boundaries, except in 10 counties. The deviation ratio is 1.23 to 1 (the most populous district is 8.8 percent above the average population per Senator, while the least populous district is 11.4 percent below the average population per Senator).

Committee members noted that the Federal District Court was favorably impressed with a plan submitted by Mr. Ostenson which would reduce the number of legislative districts to 31, the number of Senators to 43, and the number of Representatives to 86. The Ostenson plan has a deviation ratio of 1.06 to 1 (the most populous district is 3.3 percent above the average population per Senator, while the least populous district is 2.6 percent below the average population per Senator), and county lines are broken in 23 counties.

Other reapportionment plans submitted for consideration by the Federal District Court included plans by Senator Gail Hernett of Ashley, Mr. Ernest Johnson of Dazey, and Representative Donald Moore of Forbes. These plans, plus the plan submitted by Mr. Smith, would provide for from 34 to 39 legislative districts. The number of Senators would be maintained at 49 and the number of Representatives at 98. Among these plans, the plan submitted by Senator Hernett has a deviation ratio of 1.10 to 1, and the plan submitted by Mr. Johnson has a deviation ratio of 1.12 to 1. One of the plans submitted by Repre-

sentative Moore has a deviation ratio of 1.06 to 1, the most populous district is 2.6 percent above the average population per Senator, while the least populous is 2.8 percent below the average population per Senator, and 16 county lines are broken.

Several Committee members expressed preference for a reapportionment plan in which legislative district boundaries coincide with county lines to the extent possible. It was noted that people in rural areas want to maintain small unit government and that they consider the county an important entity.

The Committee considered problems associated with representation of military personnel and college students. Few Air Base personnel actually vote or become North Dakota residents. College students are included in the population of the cities where they attend school rather than in their home communities. The Committee decided that population rather than voter registration should be the basis for reapportionment. The Committee also concluded it had neither the time, nor the necessary data, to divide multi-member districts into single-member subdistricts in an accurate manner.

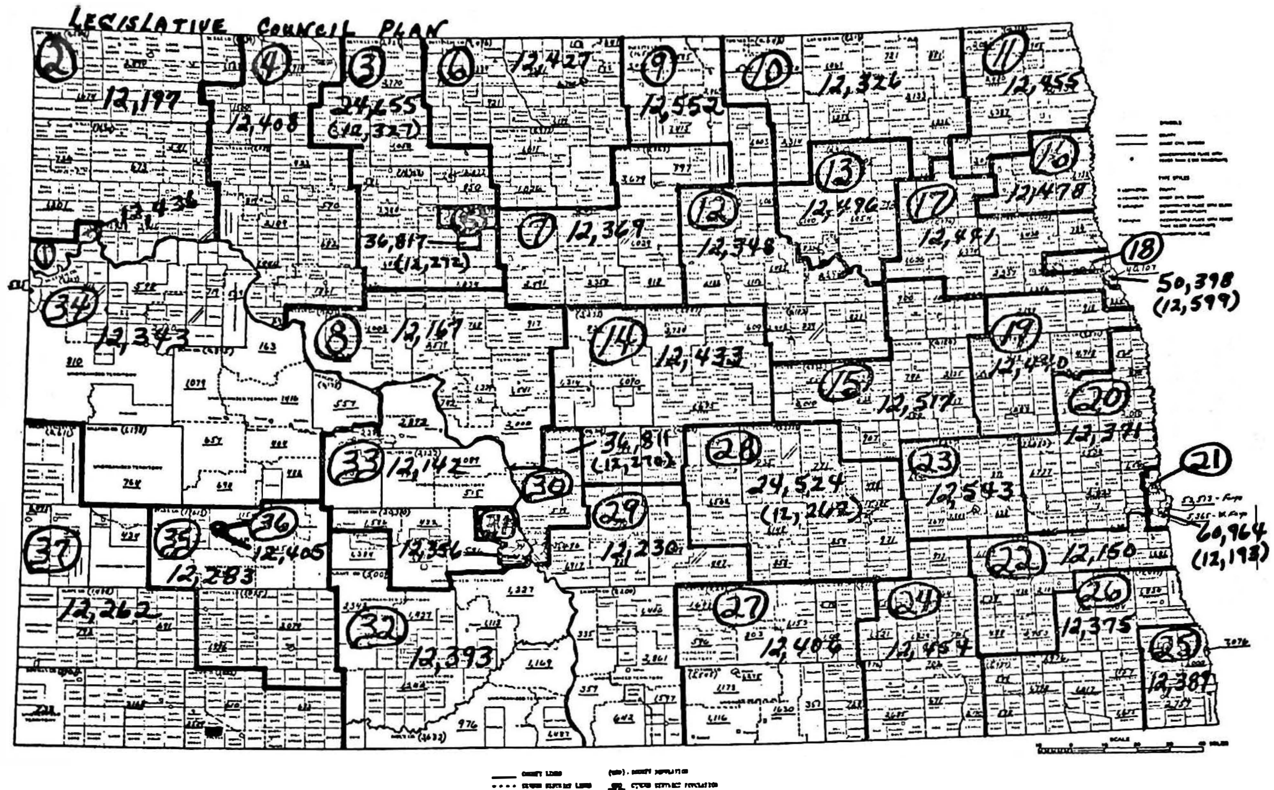
COMMITTEE ACTION

The Committee concluded that any plan adopted should include legislative districts with little variation in the average population per Senator. The Committee decided they should not attempt to maintain county integrity, or formulate legislative districts which do not cross county lines, at the expense of increased population variation. The "one-man, one-vote" requirement and "communities of interest" were the guiding principles considered most important in selection of the reapportionment plan.

The Committee adopted an amended version of a reapportionment plan formulated by Committee Chairman Hernett. The reapportionment plan adopted by the Committee provides for 37 legislative districts, with 50 Senators and two Representatives per Senator. The Committee plan has a deviation ratio of 1.04 to 1. The most populous district is 2.0 percent above the average population per Senator, and the least populous district is 1.7 percent below the average population per Senator.

The Committee also recommends that the Legislature consider action on constitutional provisions regarding legislative representation, and that the 1973 Legislature direct a concurrent resolution to the Bureau of Census requesting that population figures be collected by township and city block, thereby enhancing the ability to reapportion on the basis of equal representation.

Reapportionment Plan Recommended by the Legislative Council's 1971-73 Reapportionment Committee



REVENUE SHARING

House Concurrent Resolution No. 3091 of the Forty-second Legislative Assembly directed the Legislative Council to study the impact of federal revenue sharing proposals upon programs of the State and its political subdivisions, as well as alternative intrastate distribution programs for general revenue sharing, in order that, through proper legislative action, the State and its political subdivisions might receive their proper share of federal allocations and ensure that the State and its local governments are provided with full and adequate information to develop program priorities to best meet the most urgent needs of the State and its citizens, both efficiently and economically.

This study was assigned to the Committee on Revenue Sharing, consisting of Senators Evan E. Lips, Chairman, L. D. Christensen, and Gail H. Hernett; and Representatives Howard F. Bier, Brynhild Haugland, S. F. Hoffner, and Earl S. Strinden.

The report of the Committee was presented to the Legislative Council at its Camp Grafton meeting and approved in November 1972.

The Fiscal Assistance to State and Local Governments Act (federal-state revenue sharing) was approved on October 20, 1972. Prior to action by a conference committee, Senate and House versions of the bill were significantly different and subjected to constant revision, making it difficult for the Committee on Revenue Sharing to complete any meaningful research.

Several members of the Committee and the Committee staff attended the Regional Conference on Revenue Sharing in Denver, Colorado, on October 26, 1972, called to inform State and local Government leaders about the philosophy, administration, and implementation of general revenue sharing.

At the regional meeting, Mr. Casper W. Weinberger, Director, Office of Management and Budget, commented that this legislation is designed to enhance the role state and local governments play in the federal system. It was noted that regulations governing the use of revenue sharing funds are to be as simple and free of red tape and other restrictions as is possible within the terms of the law. Mr. Weinberger stated that "the genius of this landmark law is that each decision as to the use of these moneys can and should be unique to the problems and demands of each State or local Government and its people."

The Office of Revenue Sharing has been established under the Secretary of the Treasury to administer the State and Local Fiscal Assistance Act of 1972. The main task of the Office of Revenue Sharing will be to verify the data used for applying revenue sharing formulas. Data is based on the Census Bureau's "Census of Governments" (1967) but is continually being revised and updated. The Census Bureau is currently collecting 1972 data on state and local governments. It was noted at the regional meeting that a correct and current data base should be available by the first or second quarter of 1973.

BRIEF DESCRIPTION OF STATE AND LOCAL FISCAL ASSISTANCE ACT OF 1972

1. **Amount of assistance:** A total of $30.2 billion over a five-year period. Annual amounts on a calendar year basis are as follows: 1972 - $5.3 billion; 1973 - $5.975 billion; 1974 - $6.125 billion; 1975 - $6.275 billion; 1976 - $6.425 billion. With the exception of 1972, the revenue sharing funds will grow at a rate of $150 million per year. This increase is divided one-third to states and two-thirds to local governments.
2. **Funding mechanism:** Not tied to a percentage of the federal personal income tax base or collections; rather, a permanent, five-year authorization/appropriation into a "local government high priority expenditure trust fund."
3. **Retroactive payments:** Payments will be made retroactively to January 1, 1972, with first checks due the first week of December 1972 for the January 1 through June 30 entitlement period.
4. **Eligibility:** All states and general purpose local governments (counties, townships, and incorporated municipalities). There is no population cutoff for local governments. Local jurisdictions may not receive over 50 percent of its adjusted taxes plus intergovernmental transfers. There is a $200 minimum allocation. In addition, a local government may not receive less than 20 percent of the per capita allocation to all local governments in that state, no more than 145 percent.
5. **State and local government trust funds:** State and local governments must create a trust fund in which to deposit all revenue sharing funds. Purpose to facilitate proper federal auditing and accounting procedures. Amounts in the trust fund (including any interest earn-

ed thereon while in such trust fund) must be used within 24 months from the date of the check, unless permission is obtained from the Secretary for a longer period within which the funds may be utilized. Revenue sharing money may be commingled with other funds for investment purposes.

6. **Restriction on use of funds:**
   a. **High priority expenditure items:** Such restrictions apply to local governments only. There are no restrictions on the use of state funds. The local funds must be used for certain "high priority expenditures" designed by Congress. For **maintenance** and **operating expenses,** the funds may be used for public safety, (including, but not limited to, law enforcement, fire protection and building code enforcement); environmental protection (including, but not limited to, sewage disposal, sanitation, and pollution abatement); public transportation (including, but not limited to, transit systems and streets); health; recreation; social services for poor or aged; financial administration (including, but not limited to, budgeting, auditing, and tax collecting); and libraries. For **capital expenditures,** there are no limitations. Funds may be expended for any and all capital expenditures which are authorized by law, as long as they meet an "ordinary and necessary" test.

   b. **"Matching" federal programs:** State and local governments may not use revenue sharing funds to match federal funds for other federal grant-in-aid programs where there is a requirement for matching with either federal or non-federal funds. Revenue sharing funds may be used to supplement other federal grant funds.

   c. **State maintenance of fiscal effort to local governments:** Provides that state governments may not reduce the financial aid they have been giving to local governments from non-revenue sharing funds. There is no "maintenance of effort" requirement for local governments.

   d. **Non-discrimination:** Prohibits state and local governments from using revenue sharing funds in a manner that discriminates on the basis of race, color, national origin, or sex.

   e. **Davis-Bacon:** Requires that state and local governments provide that all laborers and mechanics employed by contractors or subcontractors on construction projects financed by revenue sharing funds be paid wages not less than those prevailing on similar construction in the locality in accordance with the Davis-Bacon Act. This provision would only cover projects financed by 25 percent or more of revenue sharing funds.

   f. **Prevailing wage rate:** The state and local governments must pay wages not lower than the prevailing rates of pay for persons employed in similar jobs by that government if 25 percent or more of the wages of all government employees of the recipient government in such categories are paid from revenue sharing funds.

7. **State and local distribution formula:** The conference committee agreed on a formula which would give each state the higher amount of either the House formula or the Senate formula each year. The House version of the bill essentially would have distributed the funds to state and local governments on the basisi of population, urbanized population, and population inversely weighted for per capita income. The Senate version essentially would have distributed the funds on the basis of population, state and local tax effort, and inverse per capita income (the so-called poverty factor). By taking the higher amount for each state, the total program for the first calendar year (1972) should be $5.825 billion (this is the base figure for the program and its future growth). However, the conference committee determined that Federal Government should expend only $5.3 billion the first calendar year. Therefore, after the higher figure for each state is determined, it will be proportionately reduced so that the totals for all states will equal $5.3 billion (this means an approximate reduction of 9.1 percent for each state).

After this higher amount is distributed down to the state level, it is divided one-third to the state government and two-thirds to the local governments within that state. The two-thirds local pot for each state is then: 1) distributed to the county area on the basis of county population, tax effort, and inverse per capita income (i.e., each county area's share is determined by its population multiplied by the tax efforts of the county and its municipalities and further multiplied by its inverse per capita income); 2) split between the county and its municipalities on the basis of "adjusted taxes". Adjusted taxes are defined to include property income, sales, growth receipts, corporate income, etc., with the exception of those taxes levied for or attributable to education. This step in the formula determines the amount that a given county government would receive; and 3) divided among the municipal-

ities within that county on the basis of the same three factors of population, tax effort, and inverse per capita income.

After the first 12 months (starting January 1, 1973), a state may adopt an alternative formula for distribution of the two-thirds pot to local governments by using the optional factor of population multiplied by tax effort or population multiplied by inverse per capita income. The weighting of the factors may vary from zero to 100 percent. The change may be applied at the county level, the municipal level, or both. Any change must be applied uniformly throughout the state. A state may adopt an alternative formula only once.

8. **Reporting procedures:** Provides that each state and local government must submit an annual report to the Treasury Department detailing the purposes for which the funds are intended to be spent. They must also submit reports at the end of the year showing how the funds have been spent or obligated. Reports must also detail amounts and sources of non-revenue sharing funds used for matching federal grants. Each state and local government must also publish a copy of these reports in state and local newspapers.

9. **Budgeting procedures:** State and local governments must follow the same budgetary laws and procedures for expending revenue sharing funds as it does for its own revenues.

10. **Audit procedures:** State and local governments must use such fiscal, accounting, and audit procedures as established by the Department of the Treasury. The Treasury Department may accept a certification from local officials indicating valid auditing procedures.

11. **Social Services program:** Title III of the revenue sharing bill contains a $2.5 billion ceiling on the social services program beginning July 1, 1972. This amount is merely an authorization, and still must go through the annual appropriations process. The funds would be distributed among the states on a straight population basis. Eligible services include most of those that are eligible under existing law such as: retarded persons, child care, family planning, narcotics treatment, alcoholic treatment, and foster homes and may be spent on potential, present, and prior welfare recipients. However, 90 percent of the remaining funds (after the funds have been spent by the state for the six programs just mentioned) may be spent only for applicants or recipients of welfare. Child care services are defined only as those services needed to enable a member of a family to work, take job training, or to provide necessary supervision for a child whose mother is deceased or disabled. The program matching features still contain the 75 percent federal, 25 percent state ratio.

NORTH DAKOTA'S REVENUE SHARE

The breakdown of North Dakota's share of revenue sharing money for the calendar year 1972 is as follows:

State government	$ 6,500,000
County government	6,873,000
Townships	2,087,000
Cities over 2,500	2,821,000
Cities under 2,500	1,391,000
Total for State	$19,672,000

Revenue sharing funds for the calendar year 1972 will be distributed to local governments in North Dakota in the following manner and amounts:

Adams — Total	$ 91,890
County government	53,573
Barnes — Total	338,413
County	188,479
Valley City	54,016
Benson — Total	254,648
County	178,634
Billings — Total	37,000
County	4,312
Bottineau — Total	280,745
County	154,959
Bottineau	26,580
Bowman — Total	113,172
County	75,204
Burke — Total	146,365
County	77,507
Burleigh — Total	620,143
County	202,027
Bismarck	389,813
Cass — Total	1,245,078
County	438,326
Fargo	640,543
West Fargo	21,986
Cavalier — Total	253,660
County	144,317

Dickey — Total	215,455
County	106,194
Divide — Total	140,960
County	87,615
Dunn — Total	151,183
County	86,054
Eddy — Total	117,318
County	56,767
Emmons — Total	151,549
County	117,265
Foster — Total	104,793
County	68,098
Golden Valley — Total	80,641
County	49,024
Grand Forks — Total	638,838
County	78,811
Grand Forks	440,854
Grant — Total	154,704
County	99,452
Griggs — Total	129,223
County	80,208
Hettinger — Total	156,742
County	77,537
Kidder — Total	134,721
County	102,346
LaMoure — Total	163,842
County	86,426
Logan — Total	63,981
County	49,788
McHenry — Total	277,256
County	143,033
McIntosh — Total	87,756
County	70,122
McKenzie — Total	140,721
County	93,112
McLean — Total	347,489
County	261,801
Mercer — Total	77,017
County	47,431
Morton — Total	627,277
County	430,668
Mandan	142,707
Mountrail — Total	260,578
County	160,705
Nelson — Total	179,350
County	84,517
Oliver — Total	71,715
County	70,168
Pembina — Total	325,086
County	173,692
Pierce — Total	158,339
County	109,888
Rugby	24,380
Ramsey — Total	260,261
County	142,236
Devils Lake	63,016
Ransom — Total	136,862
County	75,029
Renville — Total	110,158
County	58,988
Richland — Total	354,361
County	195,737
Wahpeton	41,000
Rolette — Total	295,247
County	199,043
Sargent — Total	154,541
County	94,365
Sheridan — Total	99,821
County	84,706
Sioux — Total	82,187
County	75,500
Slope — Total	45,834
County	23,394
Stark — Total	319,028
County	184,915
Dickinson	113,037
Steele — Total	93,576
County	57,301
Stutsman — Total	565,225
County	213,242
Jamestown	248,413
Towner — Total	112,438
County	65,132
Traill — Total	266,942
County	156,558
Mayville	25,323
Walsh — Total	501,915
County	315,611
Grafton	62,773
Ward — Total	849,991
County	305,687
Minot	419,431
Wells — Total	151,237
County	75,422
Williams — Total	396,306
County	202,492
Williston	107,497

The above entitlements are, however, subject to change because the data base is continually being reviewed, corrected, and updated.

COMMITTEE ACTION

Although the Fiscal Assistance to State and Local Governments Act provides that a state may adopt an alternative formula for distribution of funds to local governments by using the optional factor of population multiplied by tax effort or population multiplied by inverse per capita income, it did not appear feasible for the interim Committee on Revenue Sharing or the Forty-third Legislative Assembly to study alternative formulas, because the data base from which alternative possibilities are derived and could be studied will not be available from the Office of Revenue Sharing until the first or second quarter of 1973.

The Committee held a meeting in conjunction with the Regional Conference on Revenue Sharing, and directed the Committee staff to investigate the need for legislation (an emergency measure) which would allow local units of government to use the revenue sharing funds they receive, although authority for expenditure of such funds is not included in the current budget. Section 11-23-06, relating to county budgets and Section 40-40-15, relating to municipal budget laws provide that no county (municipal) expenditure shall be made or liability incurred, nor shall a bill be paid for any purpose in excess of the appropriation made therefor in the final budget.

The Committee also plans to invite state officials to appear before the Committee regarding the creation of a trust fund for deposit of the State's revenue sharing funds in order to facilitate federal auditing and accounting procedures.

Because the Revenue Sharing Act passed the Congress so late in the year, the Committee has been unable to complete its work and must therefore request a waiver of Legislative Council rules that it file its final report by November 15. It will file a report upon its final recommendations prior to the beginning of the regular Legislative Session.

STATE AND FEDERAL GOVERNMENT

House Concurrent Resolution No. 3036 of the Forty-second Legislative Assembly directed the Legislative Council to study the North Dakota laws regarding the sale or exchange of state-owned lands under the authority of either the State or its various departments or agencies. House Concurrent Resolution No. 3040 directed the Legislative Council to study the membership, duties, responsibilities, and appointments of all statutory boards and commissions, except occupational and professional licensing boards and commissions. House Concurrent Resolution No. 3052 directed the Legislative Council to study the Judges' Retirement Fund, and the statutes providing the system of retirement benefits for Supreme and District Court judges to determine the desirability and feasibility of altering that system, of merging it with another retirement program, or of making such other recommendations as the results of this study may indicate are necessary.

These studies were assigned to the Committee on State and Federal Government, consisting of Representatives Clark J. Jenkins, Chairman, H. Odell Berg, William A. Erickson, Henry Ganser, Arnold Gronneberg, Peter S. Hilleboe, Fern Lee, Carl A. Meyer, Paul Patrick, Albert L. Rivinius, Earl Rundle; and Senator Kenneth L. Morgan.

The report of the Committee on State and Federal Government was submitted to the Legislative Council at the biennial meeting of the Council held at Camp Grafton. The report and recommended legislation were adopted for submission to the Forty-third Legislative Assembly by the Legislative Council in November 1972.

SALE OR EXCHANGE OF STATE-OWNED LANDS

As background for this study, the Committee considered a survey of the statutory authority of state agencies to buy or sell real estate. The governmental land sale or exchange policies of several other western states were also surveyed.

The Committee recognized two primary problems in this area. First, the delay encountered by some state agencies in exchanging land with the Federal Government; and second, the problem of bills which authorize the sale or purchase of specific land, but do not provide legally correct information on which the agency making the sale or purchase can rely.

The Committee requested a bill draft establishing a uniform policy for exchange of land between state agencies, or between state agencies and the Federal Government or political subdivisions of the State. Upon consideration of the draft, the consensus of the Committee was that the exchange of land by state agencies, and the sale or purchase of land by state agencies should be subject to closer legislative scrutiny, and that general authorizing statutes should not be passed. To the extent possible under current statutes, the Committee felt that most state agency sales, purchases, or exchanges of land should be subject to specific legislative approval. Therefore, the Committee tabled the bill setting up a general procedure for exchange of land.

In regard to the problem of inaccuracies or legal inadequacies contained in bills authorizing the sale or purchase of specific land, the Committee noted that one such bill, which passed during the last Session, described a piece of land to be sold in such manner that the particular land could not be identified from the description. This same bill also did not properly identify the purchaser.

In order to help provide a solution to this problem, which has arisen more than once during the last several Sessions, the Committe recommends a bill which would require the Attorney General's office to review each bill introduced during any Session which provides for the sale or exchange of specific state-owned land, or for the purchase of specific land by the State.

The review is for the purpose of determining that the bill contains a sufficient legal description and accurately describes the parties to the transaction. After the Attorney General has been furnished an abstract of title, as required by the Committee's bill, he is to issue a legal opinion as to the ownership of the land, and, in addition, he is to see that the land has been properly appraised.

Upon completing his review, the Attorney General is to give the bill, accompanied by a written report of his findings, to the presiding officer of the House or Senate having the bill, or where it will be introduced. The Attorney General has 10 days from receipt of the bill to complete his review.

If, as a result of the Attorney General's review, a bill is not returned to the presiding offi-

cer until after the deadline for introduction of bills, the bill is to be received by the presiding officer and filed as if it had been received on the last day of the period for introduction of bills by individual members.

One of the primary purposes of the bill is to give warning to prospective purchasers of state land, and prospective sellers of land to the State, that any bill authorizing the transaction is to be checked by the Attorney General. Since the Attorney General can review the bill prior to introduction, the Committee proposal may result in specific land sale, exchange, or purchase bills being drafted well in advance of the Session.

The Committee slightly extended the scope of its study under House Concurrent Resolution No. 3036, and considered briefly the subject of land use planning and zoning. They heard a report from the Chairman concerning his attendance at an Environmental Management and Protection Seminar in Washington, D. C. The Chairman noted that pending federal legislation on land use planning would require the individual states to prepare a comprehensive state land use plan. The Committee recognized that a great deal of study would have to be given to the preparation of a state land use plan, and also recognized that this study should not be commenced after federal legislation requiring a state plan has been passed.

Therefore, the Committee is recommending a concurrent resolution calling for a Legislative Council study on the whole field of land use planning and zoning during the next biennium. The resolution provides that the Legislative Council is to call on the services of interested public or private agencies or persons to assist it in carrying out the study. The Committee envisions that the study committee will be a central forum for receiving the viewpoints of federal, state, and local officials regarding local, regional, and statewide land use planning and zoning.

BOARDS AND COMMISSIONS STUDY

In preparation for the study of statutory boards and commissions, the Committee considered action taken during the 1971 Session on recommendations resulting from a similar study during the previous legislative interim. Several of the bills dealing with boards and commissions during the last Session failed of passage, or passed and were vetoed.

In addition, several bills dealing with boards and commissions passed during the last Session gave rise to other necessary amendments in the Century Code.

The scope of the study was also broadened somewhat to include consideration of a recommendation from the Administrative Committee on Veterans' Affairs, which Committee was created during the last Session as a result of the previous interim study of boards and commissions. The Administrative Committee on Veterans' Affairs recommended that it be allowed to charge a membership contribution at the Soldiers' Home.

Recommendations

The Committee is recommending eight bills as a result of the study of boards and commissions. These bills will be briefly analyzed in the subsequent paragraphs under this heading.

The Committee recommends a bill to repeal Chapter 54-49 of the Century Code, which is the authorizing statute for the Natural Resources and Environmental Management Council.

This bill is identical to the bill recommended by the previous study committee. The Natural Resources and Environmental Management Council consists of the Governor, the Chairmen of the Senate and House Natural Resources Committees, the Commissioner of Agriculture, the Attorney General, the State's Soil Conservation Committee Executive Secretary, the Game and Fish Commissioner, the State Land Commissioner, the State Geologist, the Secretary of the State Water Commission, the State Forester, the Dean of Agriculture of NDSU, the Superintendent of the State Historical Society, the Director of the Bureau of Business and Industrial Development, the Highway Commissioner, the State Health Officer, the Director of the State Park Service, and the State Liaison Officer of the State Outdoor Recreation Agency. The purpose of the Council is to collect, analyze, and interpret information furnished by state agencies responsible for some phase of natural resources management, and to attempt to coordinate the efforts of such agencies. The Committee's principal reason for recommending the bill is that such coordination and information exchange could be carried out by agreement, and that statutory authority for a special organization for that purpose is not necessary.

The Committee recommends a bill which would repeal the statutory authorization of the North Dakota Trade Commission. This bill also was introduced during the last Session. The Trade Commission has not functioned for several bienniums, due to the refusal of the Legislative As-

sembly to appropriate funds for its operation. This being the case, the Committee recommends that the Trade Commission be abolished. Investigation and deterrence of unfair trade practices would continue to be the responsibility of the Attorney General, as is the case under current law.

The Committee is recommending a bill to amend Section 54-16-01, which sets forth the membership of the Emergency Commission. The amendment would provide that if the Chairman of either of the Appropriations Committees should die or resign, the Vice Chairman could serve on the Emergency Commission, when its membership is required to be expanded. The Vice Chairman of an Appropriations Committee may also be requested to serve by the Chairman of that Committee in the event that the Chairman must necessarily be absent from a meeting of the expanded Emergency Commission. The bill also provides that two members of the Emergency Commission constitute a quorum, except when the membership is expanded, in which case four members are necessary to make a quorum. Present law makes no specific statement as to Emergency Commission quorums.

A bill to change the function of the State Auditing Board is recommended. The membership of that Board is changed to include the State Treasurer, and to remove the Director of the Department of Accounts and Purchases from membership on the Board. However, the Director of the Department of Accounts and Purchases is retained as Secretary for the Board.

The Board would no longer have to audit all claims and accounts. That function will be taken over by the Director of the Department of Accounts and Purchases.

Under the bill, the Board would serve as an appeals board for any person or department aggrieved because the Director of Accounts and Purchases disallowed a claim. Thus, the Auditing Board would not have to meet regularly, and would only find it necessary to meet in case there was an appeal from the decision of the Director of the Department of Accounts and Purchases.

All monetary demands against the State, except those claims or demands presently exempted by law, would be filed with the Director, rather than with the Auditing Board as is presently the case. The Director would also have authority to prepare the standard voucher forms now required to be prepared by the Auditing Board.

An identical bill was introduced during the last Session, after recommendation from the previous study committee. However, the bill was amended during the course of its passage so as to only provide for a change in the membership of the Auditing Board. That change was to add the State Treasurer and remove the Director of the Department of Accounts and Purchases. Following passage, the Governor vetoed the bill. In his veto message, he stated that the bill, as originally presented, did have merit.

The principal reason for recommending this bill again is to conserve the valuable time of those state officials who are members of the Auditing Board. The Director of the Department of Accounts and Purchases already has experience in approving payroll vouchers, and his position is particularly suited to the handling of other vouchers and claims.

The Committee recommends a bill to amend Section 54-07-01.2, which was created during the last Session and gives the Governor the power to appoint a majority of the members of certain boards and commissions when he first commences a term of office. This is essentially a "cleanup" bill, since the bill, as passed during the last Session, did not take into account the fact that several of the boards named in it were abolished during the same Session, and other boards were created. The necessary corrections have been made in the bill being recommended by the Committee.

The Committee recommends a bill to amend two sections in Chapter 55-08 to delete reference in those sections to the "State Park Advisory Council." The State Park Advisory Council was abolished by action of the 1971 Legislature, but the references to that Council were not deleted from the two sections contained in the bill recommended by the Committee. Again, this is a simple "clean-up" bill.

The Committee heard testimony from members of the Veterans' Coordinating Council and the Administrative Committee on Veterans Affairs which indicated that the various veterans' organizations would like the Administrative Committee to have authority to levy a membership contribution at the Soldiers' Home in Lisbon. The funds raised by this membership contribution could be used only for expansion or development of facilities of the Home, or for enrichment of living conditions or provision of additional treatment for members of the Home. The testimony also indicated that a survey had been made of the members of the Home, and an overwhelming majority of those members would be willing to pay a reasonable membership contribution.

The veterans' representatives suggested that the membership contribution be set by the Administrative Committee, and be based on the "adjusted income" of members of the Home. They requested that "adjusted income" be defined to exclude any service-connected compensation received by a member; any moneys received by a member for work performed at the Home; any moneys earned during an authorized furlough from the Home; and any moneys expended for medical treatment or hospitalization.

The veterans' representatives recommended a membership contribution charge, as follows:

1. On an adjusted monthly income of $2-$50 — no charge;

2. On an adjusted monthly income of $50.01-$100 — a $5.00 membership contribution;

3. On an adjusted monthly income of $100.01-$150 — a $15.00 membership contribution;

4. On an adjusted monthly income of $150.01-$200 — a $25.00 membership contribution; and

5. On an adjusted monthly income of over $200 — a $30.00 membership contribution.

The Committee decided, after consideration of the testimony, that it would be desirable to authorize a membership contribution at the Soldiers' Home. The Committee recognized that this would be an appropriate topic for consideration by the interim Budget Section. However, the Budget Section had practically completed its work. Therefore, the Committee is recommending a bill which would authorize the Administrative Committee on Veterans' Affairs to set a membership contribution charge which may not exceed 49 percent of the average daily per-member cost at the Home. The contribution is to be based on an individual member's "adjusted income", which phrase is defined in the bill to include income received from every source, including Social Security benefits, and to exclude those items requested during the testimony of the veterans' representatives.

The Administrative Committee can modify the rate of membership contribution, and can rescind the membership contribution requirement. The Commandant of the Home would be responsible for collecting the contributions and depositing them in a special fund in the State Treasury.

The special fund will be subject to legislative appropriation, but is designated solely for expansion or development of facilities at the Home, for enrichment of living conditions at the Home, or for provision of additional care for members of the Home. The special fund is to be invested by the State Investment Board, and all interest and income earned is to be returned to the special fund.

JUDICIAL RETIREMENT

As background to its study of the present retirement system for Supreme and District Court judges, the Committee retained the consulting actuary firm of George V. Stennes and Associates of Minneapolis to review the actuarial status of the Judges' Retirement Fund.

In his report, the consultant noted that the present fund is on a "pay-as-you-go basis" rather than being a funded plan. The consultant noted that payment of benefits is entirely dependent upon legislative appropriations. He indicated that while cash demands are small at the present time ($49,798.00 per year), they could "snowball into large amounts in the future". In addition, the consultant pointed out that retirement benefits which are earned now as a result of the participating judge's current service are "in reality paid for by a future generation of taxpayers". The consultant went on to say: "This is especially inequitable in a plan like the judges' plan in which the benefit which is promised is an unknown quantity which increases every time the salaries of active judges increase."

The consultant made an actuarial valuation based on an assumption that funds in the retirement plan would have earned 4½ percent compounded annually, and that judicial salaries would increase at a rate of 4½ percent per year. In addition, an average retirement age of 70 years was assumed.

The past accrued unfunded liability of the current fund turned out to be $1,940,503, which, if amortized over a period of 30 years, would require an annual amortizing payment of $113,985, or 24.23 percent of the current annual payroll. If amortized over a period of 40 years, the annual payment would be $100,906, or 21.45 percent of the current payroll.

The "normal cost" of current benefits to be paid was calculated at 21.24 percent as a level percentage of increasing payroll. Thus, the actuarial valuation of the fund revealed that the past and current program of benefits involves a cost which is in the neighborhood of 45 percent of the payroll of the participants.

The actuarial consultant constructed a hypothetical table showing what benefits would be

paid to a judge who took office at the present time at ages 40, 50, and 60, and retired at age 70. The consultant assumed that salaries would increase at the rate of 4½ percent per year, and that the judges' contribution would earn 4½ percent per year. The following table is designed to indicate the monthly retirement benefits available given those hypothetical situations if the judge were under the present Judges' Retirement Fund, or under the Public Employees Retirement System, with state matching contributions made either on the first $12,500 of his judicial salary, or on his full salary:

Starting Age	Present Plan	Public Employees	
		$12,500	Full Salary
40	$3,121	$1,089	$1,505
50	2,010	487	646
60	1,294	165	208

It should be noted that the benefits listed in the table under the "present plan" would escalate after retirement, because those benefits are adjusted whenever the salaries of active judges are increased.

The actuarial consultant also discussed the fact that some of the options available under the current plan are not entirely equitable and he suggested means of adjusting them to make them more actuarially equitable. However, due to the Committee's recommendation to phase out the present fund, further consideration was not given to those adjustments.

The Committee then directed the staff to draft two bills: one providing that judges elected for the first time in the future would be under the Public Employees Retirement System, and the other requiring incumbent judges to come under the system as of the date they take office after re-election occurring after the effective date of the bill. When these drafts had been prepared, the Committee invited members of the Judicial Council's Committee on Retirement of Judges, and other members of the Judicial Council, to make an appearance before the Committee and comment on the proposed drafts.

Four Supreme Court judges and five District Court judges made an appearance. The gist of their presentation was that they stood in opposition to the Committee's proposals, and thought that the Legislative Council should take no action to change the present Judges' Retirement Act.

After the hearing with the members of the Judicial Council, the Committee decided to proceed with consideration of changes in the retirement program for Supreme and District Court Judges. The Committee established the following criteria for considering further a bill proposing changes:

1. Is any proposed new system to be considered actuarially sound;
2. Is it fair to the persons who it is to affect; and
3. Does it take into consideration the need to induce competent lawyers to seek or accept judicial office.

After further deliberation and another meeting on the topic, the Committee recommended a bill which would put all Supreme and District Court judges elected in the future under the Public Employees Retirement System. Incumbent judges would be given several options to choose from should they decide to seek re-election after the effective date of the bill. These options, and other points in the bill will be discussed in subsequent paragraphs. Prior to approval of the bill, the Committee also discussed the best method of inducing competent attorneys to run for or accept appointment to judicial office. The unanimous consensus of the Committee was that inducement to competent younger attorneys to seek judicial office should be in the form of current salary offered, rather than in the form of potential retirement benefits. With that in mind, the Committee recommends to the Legislative Council and to the Legislature that the salaries of judges of the Supreme and District Court be increased.

As pointed out, the bill recommended by the Committee would require all judges elected to the Supreme or District courts for the first time to be members of the Public Employees Retirement System (hereinafter PERS). However, the rate of contribution to that system would be different from that of all other public employees. Public employees presently contribute 4 percent of their gross salary, plus a matching contribution of 4 percent from the State (1 percent of which is used for administrative expenses of the system. Supreme and District Court judges would contribute 5 percent, with a matching 5 percent contribution from the State, one-half of 1 percent of which would be used for the administrative expenses of the fund. In addition, while the State matches the contribution of state employees only up to $12,500 of gross salary, the state contribution on behalf of the judges would be based upon 5 percent of the judges' full salaries. This contribution and matching contribution formula is carried throughout the bill, and would apply to incumbent judges who might select one of the options to be subsequently described.

Current judges are given several options under the bill. First, a current judge can choose to withdraw, immediately after the effective date of the bill, from the present judicial retirement program, and thereafter not to participate during the remainder of his judicial service in any state retirement program. If a judge chooses this option, he will be entitled to withdraw his previous contributions made under the present Judges' Retirement Act, plus an amount equal to 60 percent of his individual contribution reduced by applying the vesting schedule applicable to other public employees under the Public Employees Retirement System, plus earnings on this latter figure, plus earnings on the prior contribution calculated at the rate of 5.6 percent compounded annually. The earnings figure is abstracted from the average earnings of PERS during the first six years of its existence.

The total amounts received, should a judge select this option, would not be subject to state income tax, and the bill provides that the moneys received may be treated as an additional adjustment reducing the amount of taxable income to the extent that the moneys received would be included in "taxable income" as that phrase is defined in Subsection 20 of Section 57-38-01, i.e., as federal taxable income. The total amounts receivable by each judge, and the totals necessary to be appropriated should each judge exercise this option on August 1, 1973, are set out in Table I accompanying this report. Hypothetical retirement benefits which might be received by new judges are set out in Table II. (Note: All tables prepared for this report were prepared prior to the appointment of Judge Warner and the retirement of Judge Gefreh.)

The next option available to current incumbents would be to elect to join the PERS immediately after passage of the bill, but no later than January 1, 1974. If this option is taken, the contributions previously made by the judge to the Judges' Retirement Fund would be transferred to his account in PERS, plus an amount equal to 60 percent of that amount, plus earnings thereon calculated by applying the average earnings of PERS to the 60 percent matching contribution. Table III, attached to this report, details the dollar effect should all current judges accept this option.

The next two options available apply only to judges who seek reelection after the effective date of the bill, and who have not chosen one of the previously discussed options. Upon seeking re-election, a judge must make a selection of one of the two subsequently discussed options, or the judge will be deemed to have selected the first option.

The first option is to freeze the retirement benefits payable under the current Judges' Retirement Act as of the date of taking office following re-election, and thereafter to participate in PERS. Under this option, a judge would be entitled to two retirement benefits. One would be payable under the present system, to the extent that he was entitled to it as of the date of taking office after the effective date of the bill, but without acceleration of benefits thereafter. The second benefit would come from purchase of an annuity under PERS, which annuity would be based on the amount of funds accumulated in his account during his membership in PERS. Table IV gives an example of how this option could be calculated in relation to a current judge of the Supreme Court.

The second option which a judge, successfully seeking re-election after the effective date of the bill, could choose would allow him to transfer his previous contributions from the Judges' Retirement Fund to PERS, plus an amount equal to 60 percent of the amount transferred to be contributed by the State, plus the earnings on the periodic annual balances in his Judges' Retirement Fund account during his years of service prior to selection of the option. Table V gives a breakdown of the amounts available for purchase of monthly annuities should all current active judges select this option.

Judges who are currently retired under the Judges' Retirement Fund, and judges who would retire after the effective date of this bill without running for re-election would be entitled to the same retirement benefits as under present law. This would include acceleration of their retirement benefits each time that current active judges received a salary increase.

The remainder of the bill amends sections of the current PERS statutes to provide for inclusion of Supreme and District Court judges as members of PERS. Again, the State would contribute 5 percent of judges' salaries, with the contribution being made on the total salary being received by each judge, rather than on a maximum of $12,500, as is the case with other state employees.

The Committee believes that this bill satisfies the three criteria established by it for consideration of changes in the judges' retirement program. In addition, the Committee hopes that the Legislature will take a close look at judicial salaries and will try to place the incentive for seeking judicial office on current salary, while providing a reasonable retirement benefit. The Committee believes that the bill proposed does provide a reasonable retirement benefit which would be actuarially sound to the extent possible.

TABLE I

STATE MATCHING CONTRIBUTION IF ALL JUDGES ELECTED TO WITHDRAW THEIR CONTRIBUTIONS FROM THE JUDGES' RETIREMENT FUND ON 8-1-73

Judge	Col. 1 Birthdate	Col. 2 Service Commencement Date	Col. 3 Total Service to 8-1-73	Col. 4 Age at 8-1-73	Col. 5 Projected Account Balance 8-1-73	Col. 6 60% of Projected Balance	Col. 7 Matching Amount using Vesting Schedule	Col. 8 Compound Earnings on Periodic Balances	Col. 9 Total Receivable (Cols. 5,7 & 8)
Strutz, A.	5-27-1903	4-01-1959	14 yrs. 4 mos.	70	$ 11,878.91	$ 7,127.35	$ 2,850.94	$ 5,894.40	$ 20,624.25
Teigen, O.	9-27-1908	7-01-1954	19 yrs. 1 mo.	65	13,827.79	8,296.67	6,637.34	8,921.84	29,386.97
Erickstad, R.	8-15-1922	1-07-1963	10 yrs. 7 mos.	50	9,230.34	5,538.20	1,661.46	3,237.28	14,129.08
Knudson, H.	6-26-1903	1-04-1965	8 yrs. 7 mos.	70	7,836.00	4,701.60	1,410.48	2,196.86	11,443.34
Paulson, W.	9-03-1913	1-01-1967	6 yrs. 7 mos.	60	6,439.79	3,863.87	772.77	1,429.19	8,641.75
Redetzke, R.	1-14-1905	10-01-1958	14 yrs. 10 mos.	68	10,583.26	6,349.96	2,539.98	5,343.92	18,467.16
Englert, H.	1-31-1909	1-01-1963	10 yrs. 7 mos.	64	8,173.61	4,904.17	1,471.25	2,824.41	12,469.27
Hager, H.	6-08-1914	1-01-1965	8 yrs. 7 mos.	59	6,978.45	4,187.07	1,256.12	1,941.42	10,175.99
Maxwell, R.	11-26-1919	8-01-1967	6 yrs.	53	5,416.62	3,249.97	649.99	1,100.83	7,167.44
Bakken, A.	12-19-1920	8-01-1967	6 yrs.	52	5,416.62	3,249.97	649.99	1,100.83	7,167.44
Heen, D.	6-12-1920	3-01-1959	14 yrs. 5 mos.	53	10,416.61	6,249.97	2,499.99	5,128.59	18,045.19
Ffiederich, R.	9-20-1921	12-31-1960	12 yrs. 7 mos.	51	9,380.06	5,628.04	2,251.21	3,948.26	15,579.73
O'Keefe, J.	5-22-1930	1-01-1971	2 yrs. 7 mos.	43	2,517.66	1,510.60	-0-	251.60	2,769.26
Judge X (replacing Schneller)		4-01-1972	1 yr. 4 mos.		1,333.28	799.97	-0-	50.17	1,383.45
Gefreh, A.	12-31-1918	1-01-1963	10 yrs. 7 mos.	54	8,173.61	4,904.17	1,471.25	2,824.41	12,469.27
Lynch, W.	6-12-1926	3-02-1960	13 yrs. 5 mos.	47	9,833.29	5,899.97	2,359.99	4,489.55	16,682.83
Fredricks, M.	1-24-1912	1-01-1961	12 yrs. 7 mos.	61	$ 9,380.06	$ 5,628.04	$ 2,251.21	$ 3,948.26	$ 15,579.73
Jansonius, C.	2-02-1909	1-01-1963	10 yrs. 7 mos.	64	8,173.61	4,904.17	1,471.25	2,824.41	12,469.27
Burdick, E.	10-15-1912	6-01-1953	20 yrs. 2 mos.	60	12,708.09	7,624.85	7,624.85	8,918.79	29,251.11
Ilvedson, R.	2-17-1910	1-01-1963	10 yrs. 7 mos.	63	8,173.61	4,904.17	1,471.25	2,824.41	12,469.27
Beede, W.	9-19-1922	7-01-1971	2 yrs. 1 mo.	50	2,083.25	1,249.95	-0-	138.90	2,222.15
Giese, E.	2-09-1908	1-01-1958	15 yrs. 7 mos.	65	10,883.23	6,529.94	3,917.96	5,756.68	20,557.87
Kelsch, C.	11-04-1891	12-01-1962	10 yrs. 8 mos.	81	8,233.29	-0-	-0-	-0-	-0-
Muggli, N.	5-26-1919	1-01-1965	8 yrs. 7 mos.	54	6,978.45	4,187.07	1,256.12	1,941.42	10,175.99
					$194,049.49	$111,489.74	$46,475.40	$77,036.43	$309,327.81

TABLE II

SAMPLE CALCULATION FOR JUDGES WHO WOULD BE UNDER PERS DURING THEIR TOTAL TIME IN OFFICE[1]

	Public Employees' Retirement System					
Judge	Service Commence-ment Date	Retire-ment Date (Age 73)	State and Employee Contribu-tions	Compound Earnings on Periodic Balances	Amount Available for Annuity Purchase	Amount of Annuity Per Month
Judge Y (District Court)	1-1-1975	12-31-2007	$62,700.00	$118,740.50	$181,440.50	$1,444.27
Judge Z (Supreme Court)	1-1-1975	12-31-2007	$68,970.00	$130,614.55	$199,584.55	$1,588.69

1/ For the purposes of this calculation, Judges Y and Z would take office on 1-1-75 after being elected in the fall of 1974 and would be age 40 at the time they took office.

TABLE III

ANNUITY PURCHASABLE AT AGE 73 IF JUDGE ELECTS TO JOIN PERS ON AUGUST 1, 1973, UNDER SUBSECTION 3 OF SECTION 2

	Judges' Retirement Fund				Public Employees' Retirement System			
Judge	1. Projected Account Balance at 8-1-73	2. 60% of Projected Account Balance	3. Compound Earnings on Periodic Balances at 8-1-73	4. Funds Transferred to PERS (Total-Cols. 1, 2 & 3)	State and Employee Contributions	Compound Earnings	Amounts Available for Annuity Purchase	Amount of Annuity Per Month
Strutz, A.	$ 11,878.91	$ 7,127.35	$ 5,894.40	$ 24,890.66	$ 4,908.76	$ 4,202.34	$ 31,160.82 1/	$ 248.04
Teigen, O.	13,827.79	8,296.67	8,921.84	31,046.30	17,068.66	22,484.90	70,599.86	561.97
Erickstad, R.	9,230.34	5,538.20	3,237.28	18,005.82	46,155.05	88,251.89	152,412.76	1,213.21
Knudson, H.	7,836.00	4,701.60	2,196.86	14,734.46	4,363.45	2,524.37	18,801.32 1/	149.66
Paulson, W.	6,439.79	3,863.87	1,429.19	11,732.85	24,911.86	24,107.67	59,979.61 1/	477.44
Redetzke, R.	10,583.26	6,349.96	5,343.92	22,277.14	7,739.82	7,124.60	35,871.57 1/	285.54
Englert, H.	8,173.61	4,904.17	2,824.41	15,902.19	14,619.66	13,328.58	42,869.60 1/	341.24
Hager, H.	6,978.45	4,187.07	1,941.42	13,106.94	26,441.11	29,200.01	68,748.06	547.23
Maxwell, R.	5,416.62	3,249.97	1,100.83	9,767.42	36,732.56	48,646.43	95,146.41	757.37
Bakken, A.	5,416.62	3,249.97	1,100.83	9,767.42	38,790.85	54,624.36	103,182.63	821.33
Heen, D.	10,416.61	6,249.97	5,128.59	21,795.17	37,840.87	75,533.05	135,169.09	1,075.95
Friederich, R.	9,380.06	5,628.04	3,948.26	18,956.36	40,215.82	79,064.58	138,236.76	1,100.36
O'Keefe, J.	2,517.66	1,510.60	251.60	4,279.86	56,682.14	107,751.45	168,713.45	1,342.96
Judge X	1,333.28	799.97	50.17	2,183.42 2/	36,890.89	34,769.60	73,843.91	587.80
Gefreh, A.	$ 8,173.61	$ 4,904.17	$ 2,824.41	$ 15,902.19	$ 34,990.93	$ 54,695.25	$ 105,588.37	$ 840.48
Lynch W.	9,833.29	5,899.97	4,489.55	20,222.81	49,240.63	125,626.04	195,089.48	1,552.91
Fredricks, M.	9,380.06	5,628.04	3,948.26	18,956.36	21,849.54	26,007.58	66,813.48	531.83
Jansonius, C.	8,173.61	4,904.17	2,824.41	15,902.19	14,762.99	13,509.68	43,194.03 1/	343.82
Burdick, E.	12,708.09	7,624.85	8,918.79	29,251.73	23,274.51	38,651.74	91,177.98	725.78
Ilvedson, R.	8,173.61	4,904.17	2,824.41	15,902.19	18,207.95	17,299.09	51,409.23	409.22
Beede, W.	2,083.25	1,249.95	138.90	3,472.10	42,115.78	50,374.34	95,962.22	763.86
Giese, E.	10,883.23	6,529.94	5,756.68	23,169.85	14,408.03	15,798.63	53,376.51	424.88
Kelsch, C.	8,233.29	-0-	-0-	-0- 3/	-0-	-0-	-0-	-0-
Muggli, N.	6,978.45	4,187.07	1,941.42	13,106.94	35,782.58	52,118.70	101,008.22	804.03
Total	$194,049.49	$111,489.74	$77,036.43	$374,332.37	$647,994.44	$985,694.88	$1,998,355.37	

1/ Total does not reflect sums of relevant sections due to application of PERS "vesting schedule". See Section 54-52-11.

2/ Judge X replacing Judge Schneller, for the purposes of this calculation, would take office during April 1972, and would be 53 years old at that time.

3/ Pursuant to Subsection 1 of Section 27-17-01 of the NDCC, Judge Kelsch is not entitled to retirement benefits.

TABLE IV

EXAMPLE OF RETIREMENT BENEFITS IF JUDGE SELECTS OPTION I OF SUBSECTION 2 OF SECTION 1

	Judges' Retirement Fund			Public Employees' Retirement System				
	Period Beginning 1-7-63 and Ending 12-31-82			Period Beginning 1-1-83 and Ending 8-15-95				
Judge	Current Annual Salary	Annual Retirement Benefits	Monthly Retirement Benefits	State and Employee Contributions	Compound Earnings on Periodic Balances	Amount Available for Annuity Purchase	Amount of Annuity Per Month	Total Monthly Retirement Benefits
Erickstad, R.	$22,000.00	$11,000.00	$916.67	$26,473.36	$12,754.57	$39,227.93	$312.25	$1,228.92

TABLE V

ANNUITY PURCHASABLE AT AGE 73 IF JUDGE SELECTS OPTION 2 IN SUBSECTION 2 OF SECTION 2

	Judges' Retirement Fund				Public Employees' Retirement System			
Judge	1. Projected Account Balance at End of Current Term	2. 60% of Projected Account Balance	3. Compound Earnings on Periodic Balances to End of Current Term	4. Funds Transferred to PERS (Total-Cols. 1, 2 & 3)	State and Employee Contributions	Compound Earnings	Amounts Available for Annuity Purchase	Amount of Annuity Per Month
Strutz, A.	$ 17,960.18	$ 10,776.11	$ 13,267.89	$ -0- [1]	$ -0-	$ -0-	$ -0-	$ -0-
Teigen, O.	21,998.90	13,199.34	22,493.82	57,692.06	1,567.50	2,488.91	61,748.47	491.52
Erickstad, R.	19,589.05	11,753.43	15,247.02	46,589.50	26,473.36	59,311.46	132,374.32	1,053.70
Knudson, H.	9,394.39	5,636.63	3,141.34	18,172.36	2,244.06	1,421.57	18,456.01 [2]	146.91
Paulson, W.	10,198.26	6,118.96	3,549.02	19,866.24	18,447.39	19,733.86	56,823.70 [2]	452.32
Redetzke, R.	15,999.71	9,599.83	11,919.01	-0- [1]	-0-	-0-	-0-	-0-
Englert, H.	9,590.22	5,754.13	3,830.25	19,174.60	12,183.05	11,637.37	41,844.19 [2]	333.08
Hager, H.	10,394.98	6,236.99	4,236.74	20,868.71	19,949.98	23,938.52	64,757.21	515.47
Maxwell, R.	6,833.23	4,099.94	1,732.74	12,665.91	34,041.63	46,434.89	93,142.43	741.41
Bakken, A.	6,833.23	4,099.94	1,732.74	12,665.91	36,100.00	52,291.68	101,057.59	804.42
Heen, D.	11,833.22	7,099.93	6,493.09	25,426.24	35,149.98	71,911.83	132,488.05	1,054.61
Friederich, R.	14,796.51	8,877.91	9,629.20	33,303.62	29,924.97	64,392.10	127,620.69	1,015.86
O'Keefe, J.	6,017.52	3,610.51	1,207.82	10,835.85	50,191.65	104,575.38	165,602.88	1,318.20
Judge X	6,749.73	4,049.84	1,632.44	12,432.01 [3]	26,600.00	28,789.14	67,821.15	539.86
Gefreh, A.	$ 9,590.22	$ 5,754.13	$ 3,830.25	$ 19,174.60	$ 32,300.00	$ 51,910.01	$ 103,384.61	$ 822.94
Lynch, W.	13,249.82	7,949.89	7,953.30	29,153.01	42,749.98	114,527.80	186,430.79	1,483.99
Fredricks, M.	14,796.52	8,877.91	9,629.20	33,303.62	11,558.33	15,692.22	60,554.17	482.01
Jansonius, C.	9,590.22	5,754.13	3,830.25	19,174.60	12,326.38	11,807.58	42,157.73 [2]	335.58
Burdick, E.	18,124.54	10,874.72	17,464.19	46,463.45	12,983.30	24,240.26	83,687.01	666.15
Ilvedson, R.	9,590.22	5,754.13	3,830.25	19,174.60	15,516.66	15,371.45	50,062.71	398.50
Beede, W.	3,499.86	2,099.92	454.49	6,054.27	39,424.97	48,741.27	94,220.51	750.00
Giese, E.	16,299.68	9,779.81	12,578.14	38,657.63	4,116.66	5,197.95	47,972.24	381.86
Kelsch, C.	9,649.90	-0-	-0-	-0- [4]	-0-	-0-	-0-	-0-
Muggli, N.	10,394.98	6,236.99	4,236.74	20,868.71	29,291.65	45,591.98	95,752.34	762.19
Total	$282,975.08	$163,995.12	$163,919.93	$521,717.50	$493,141.50	$820,007.23	$1,827,958.80	

1/ Judges who are age 73 or older before the end of term after the effective date of Act retire under the terms of the present Act.

2/ Note: Total amount available for purchase of annuity reflects application of "vesting schedule" provided in Section 54-52-11. Judges noted had service time of 20 years, or less.

3/ Judge X replacing Judge Schneller, for the purposes of this calculation, would take office during April 1972, and would be 53 years old at that time.

2/ Note: Total amount available for purchase of annuity reflects application of "vesting schedule" provided in Section 54-52-11. Judges noted had service time of 20 years, or less.

4/ Pursuant to Subsection 1 of Section 27-17-01 of the NDCC, Judge Kelsch is not entitled to retirement benefits.

TRANSPORTATION

The Committee on Transportation was assigned two study resolutions. Senate Concurrent Resolution No. 4028 directed the Legislative Council to study the total field of safety responsibility and the revocation of drivers' licenses. House Concurrent Resolution No. 3063 called for a study of the financing of road and street construction in North Dakota.

Members of the Committee on Transportation are Representatives Carl H. Boustead, Chairman, Arne Boyum, Allwin DeGroot, William DeKrey, Kenneth Erickson, Robert E. Grant, I. O. Hensrud, Charles Herman, J. L. Raile, Richard Rocheleau, and Ralph M. Winge; and Senators Walter Erdman and Richard E. Forkner.

The report of the Committee on Transportation was submitted to the Legislative Council at the biennial meeting of the Council held at Camp Grafton. The report and recommended legislation were adopted for submission to the Forty-third Legislative Assembly by the Legislative Council in November 1972.

SAFETY RESPONSIBILITY

The Committee was assigned the duty of studying the total field of safety responsibility. Because of the broad scope of this directive, it was necessary for the Committee to select certain problem areas for concentrated attention. The Committee placed emphasis on the matters of revocation and reinstatement of drivers' licenses, statutes related to the reporting of accidents and drivers' records, and traffic safety.

Testimony before the Committee indicated that there was dissatisfaction by some persons concerning the procedures which must be followed by drivers who have had their licenses revoked by the Safety Responsibility Division of the State Highway Department for an offense, such as driving while under the influence of intoxicating liquor. After such persons have paid their fines and had their licenses revoked, in order to have their driving privileges restored, they are required to prove financial responsibility by filing certificates through their insurance companies. This procedure requires such persons to call to the attention of their own insurance companies the fact that they have been convicted of driving while intoxicated. The insurance companies then use this information in determining that such persons should be rated in a higher premium classification. The argument was made that this procedure forces drivers to be witnesses against themselves with the result that they are subjected to higher insurance premiums in addition to the penalties provided by law.

The Committee considered a suggestion which was made to require insurance companies to submit proof of insurance at the time policies were issued, which would place the burden on insurance companies rather than drivers in determining which policyholders had been convicted of serious driving infractions. However, the members of the Committee expresssed the viewpoint that they were in general agreement with the policy of the insurance industry which places high risk drivers in higher premium classifications. In addition, the members expressed little sympathy for drinking drivers, and notice was taken of the fact that alcohol is responsible for a high percentage of serious automobile accidents. The viewpoint was expressed that it would be regressive in the field of traffic safety to take action to provide relief for persons convicted of driving while intoxicated. Therefore, the Committee recommends no legislation regarding procedures to be followed after the revocation of driving privileges.

Because of the record number of traffic fatalities in North Dakota in 1971, the Committee invited the Safety Director for the North Dakota Highway Patrol and the Safety Engineer for the State Highway Department to make presentations concerning traffic safety. The testimony which was provided the Committee on this subject indicated that fatalities are not the best indicator of the severity of the traffic safety problem in the State. While accident fatalities have fluctuated during the past decade, the number of rural injury accidents has been increasing steadily. Attention of the Committee was drawn to the fact that the number of fatalities depends upon such variables as the number of persons occupying each vehicle involved in an accident. Thus, though the number of fatalities during 1972 represented a reduction from the number in 1971, traffic safety remains a continuing concern.

One factor which attracted the attention of the Committee concerning traffic safety was the high degree of relationship between drinking drivers and traffic accidents. Recent studies have shown that 51 percent of all persons killed in traffic crashes in North Dakota were under the influence of intoxicating liquor at the time of their death,

and that 58 percent of all drivers killed were under the influence. The Committee is aware of the fact that this is a complex problem, and that the penalties provided for the person who is caught represent only one part of the problem. In addition, it was noted that the enforcement of the law to increase the chances of a drinking driver being caught is very important. The members of the Committee expressed concern over the imposition of less than full statutory penalties, and the viewpoint was expressed that the courts may not be certain of public support for strong penalties in such cases. Therefore, the Committee recommends a concurrent resolution to express the support of the Legislative Assembly for the imposition of strong sentences for persons convicted of driving while intoxicated and to urge the courts to use every penalty available, including jail sentences and work details in lieu of monetary fines, in such cases.

The Committee also reviewed the statutes related to the reporting of accidents to the Safety Responsibility Division and the use made of abstracts of driving records. As indicated above, the Committee expressed little sympathy for persons who are required by law to obtain proof of their insurance from their insurance companies after they have been convicted of a serious traffic infraction. On the other hand, a different situation results when drivers find that their insurance premiums have been increased as the result of traffic accidents which appear on their driving records but for which they were not at fault. Members of the Committee expressed particular concern over the fact that one statute requires that only accidents resulting in death, personal injury, or property damage to an apparent extent of $200 or more need be reported, while another statute requires law enforcement officers to forward all reports of accidents they investigate to the Highway Department. Thus, if a driver reports an accident which he would not have been required to report, or if his accident occurs in a city having an ordinance requiring the reporting of all accidents, or if his vehicle was parked and struck by a hit and run driver, an entry will be made on his driving record in the Safety Responsibility Division. For a fee of $2, his insurance company can receive a copy of his driving record. The Committee concluded that this situation demanded attention, and several alternatives were considered.

One alternative considered by the Committee would have changed the requirement that law enforcement officers send in reports on all accidents they investigate. However, to remove this requirement would eliminate one valuable tool of safety officials, in that it would result in the loss of information on the location of many accidents, and the statistics which are gathered are beneficial in locating traffic hazards, such as dangerous intersections. Another alternative would be to require law enforcement officers to prepare reports on only those accidents which they believe to be reportable. However, it was pointed out that written reports of accidents are necessary for the law enforcement officer in the event he is called as a witness in a civil lawsuit arising out of the accident.

The Committee concluded that the problem is not so much related to the statutes requiring the reporting of accidents as it is to the use made of those reports by insurance companies. Therefore, the Committee recommends a bill to amend Section 39-16-03 of the North Dakota Century Code to provide that driving records which are released would contain only the convictions of traffic offenses and suspensions, revocations, and restrictions of driving privileges. In addition, the bill provides that the Highway Commissioner, upon request, shall furnish any person a copy of that portion of an officer's accident report which does not disclose the opinion of the reporting officer when the report shows that death, personal injury, or property damage of $200 or more resulted from such accident.

FINANCING OF ROAD AND STREET CONSTRUCTION

House Concurrent Resolution No. 3063 directed the Legislative Council to continue the study which had been conducted during the previous interim of the financing of road and street construction in North Dakota. After concluding a comprehensive study of this subject during the 1969-71 interim, the Committee on Transportation had concluded that before a comprehensive redrafting of the highway tax distribution formula could be undertaken, a study of functions and needs by the Highway Department should be completed and taken into consideration.

Under present law, moneys collected from motor vehicle registrations, fuels taxes, special fuels excise taxes, and motor vehicle use taxes are distributed as follows: the State Highway Department receives 63 percent and the counties receive 37 percent based upon the number of motor vehicle registrations credited to each county. The moneys which are distributed to each county are again divided within the county, with 27 percent going to the cities located within the county on a per capita basis and with 73 percent of the county share going to the county treasury for use on county roads. One change in the distribution for-

mula, which resulted from the study during the previous interim, provides that the State make direct payment to each city under the formula, thus bypassing the counties. This change has eliminated the double handling of these funds and has ensured that the funds reach their intended destination.

The Committee invited personnel from the State Highway Department for presentations on the study of functions and needs. This study is following the guidelines of the Federal Government, which has undertaken a study of all phases of highways throughout the country. National goals have been established which include such factors as economic efficiency, safety, and the optimum use of resources. The benefits of such a study will include an inventory of the road system and a uniform standard nomenclature for all roads. The purposes of the functional classification study include identifying existing roads in terms of the functions they serve and to project the highway needs of this country up to the year 1990. The identifiable needs for North Dakota roads and highways for the next 20 years include interstate improvements of $38 million; rural arterial and local roads of $1,753,000,000; and urban arterial and other urban roads, which generally do not include urban streets, of $130,565,000. These figures indicate needs for the State which considerably exceed current levels of appropriations.

A proposal was made to the Committee that the distribution of the highway tax distribution fund be determined by a functional classification system. Such a program would require that overall responsibility and accountability be assigned to the State Highway Department with a division of funds for principal arterials, minor arterials, and county secondary roads. In addition, direct allocations would be made to cities having a designated minimum population. The alleged benefits of such a system would be that long-range priorities could be established and scientific standards could be applied in determining which roads should receive attention.

Although the members of the Committee believe that the functional classification system has merit, the opinion was expressed that there is a preference for retaining a distribution system which ensures local control over the funds which are distributed. The Committee called upon the North Dakota League of Cities to make recommendations concerning the distribution formula. The League of Cities studied this problem and made periodic reports to the Committee. The League concentrated its study on methods to correct the inequities of the present law which results in some cities receiving vastly different sums on a per capita basis than others. For example, Medora, in Billings County, has a population of 129 and received $8,048 under the present formula in 1971, or a per capita share of $62.00. Sentinel Butte, which is only 15 miles from Medora but happens to be located in a different county, has a population of 125 and received $1,551 in 1971, for a per capita share of about $12.50. The city of Davenport, in Cass County, which is larger than Medora with a population of 147, received only $763 in 1971, or a per capita share of about $5.10.

The North Dakota League of Cities considered several alternatives concerning the highway tax distribution formula. Initially, it considered asking for a larger share of the highway tax dollar for cities. However, it was decided that it would be preferable at this time to seek a more equitable distribution of only that share which cities now receive, or the 27 percent of the counties' share, which totals approximately 10 percent of the total. The League also considered making recommendations to change the formula to allocate funds based upon actual collections for motor vehicle registrations and fuels taxes, but it was discovered that the fuels tax data is highly misleading, as cities along major federal or state highways generate gasoline taxes disproportionately in relation to travel on county and local roads or to the miles of local roads. Therefore, although the present method of allocating the counties' share based upon motor vehicle registrations may leave much to be desired, the League concluded it was the preferred method.

In the course of this study, there was much discussion of the fact that some very small cities receive such small sums that it is impossible to utilize these funds for road construction. Thus, the League considered limiting the allocations to only those cities meeting a certain minimum population. However, it was concluded that it would not be possible to determine the minimum size of cities which should receive allocations. The League also considered using such criteria as limiting allocations to cities which had a certain minimum assessed valuation, or cities which have street departments, or cities which have paved streets. However, each of these suggestions was found unacceptable, and the League concluded that all cities should share in the highway tax distribution fund.

The North Dakota League of Cities recommended that the cities' share of the highway tax distribution fund should be distributed on the basis of 125 percent of the state per capita average for cities under 5,000 population, with the balance to be distributed equally on a per capita basis to cities of 5,000 or more population. This

distribution takes into consideration the federally funded TOPICS program giving aid to cities over 5,000 population on some street projects in the amount of 25 percent matching. The proposal was presented to the annual convention of the League of Cities and received a 90 percent favorable vote.

The Committee recommends a bill which follows the outline of the proposal of the League of Cities. This proposal does not change the 63 percent of the highway tax distribution fund which the State Highway Department now receives, but the county share would be reduced from 37 percent to 27 percent. However, it should be emphasized that the actual amount received and retained by the counties would be changed very little, as 27 percent of the county share is now distributed to the cities located within each county. That amount which is now distributed to cities would continue to be allocated to cities, but the distribution would be made on the basis of the population of each city without reference to the county in which such city is located. Thus, while the total amount allocated to cities would not be changed appreciably, the distribution to the cities would be on a more equitable basis. Using 1971 figures, the statewide average per capita share for cities of all sizes was $8.88. Each city with a population of under 5,000 would receive 125 percent of that figure on a per capita basis, or $11.10. The cities in the State with a population of 5,000 or more would share the balance on a per capita basis, which would amount to $7.51.

MISCELLANEOUS

Another matter of concern to the members of the Committee related to the economic impact of airline strikes on North Dakota. It was noted that there had been two strikes on the only major east-west airline serving the State within two years, one of which was of six months' duration and the other of which was of three months' duration. The measurable estimated loss to the State due to loss of movement of airline passengers, airport revenue losses, tax losses to the State and airports, loss of airline employees' salaries and miscellaneous loss of business transactions totals over $1,500,000 per month during such a strike. The Committee recommends a concurrent resolution urging the Civil Aeronautics Board to grant authority to a second airline to serve North Dakota on east-west routes in order to prevent such losses in the event of future strikes or other interruptions of service.

UND-ELLENDALE BRANCH

The University of North Dakota-Ellendale Branch (UND-EB) Committee was created by the Legislative Council following the 1971 Legislature as required in Chapter 209 of the 1971 Session Laws.

The 1971 Legislature directed the Legislative Council to create a Committee "to determine a use for the physical facilities of the University of North Dakota-Ellendale Branch other than that of an institution of higher education . . . It shall be the duty of the Committee to study and determine an alternative use for the physical facilities". (Ch. 209, S L. 1971, Sec. 1) The 1971 Legislature appropriated $25,000 to the State Board of Higher Education for the work of the Committee. The need for the Committee arose when the 1971 Legislature expressed its intent that UND-EB "cease operations as an institution of higher education" as of July 1, 1971, (Ch. 1, S.L. 1971, Sec. 7).

The closing of the college stemmed indirectly from a January 9, 1970, fire which destroyed UND-EB's two main instructional and office buildings and cost UND-EB approximately 80 percent of its available classroom space. Shortly after the fire, the Legislative Council formed a special Committee to review UND-EB's status and to report to the 1971 Legislature (See Report of the North Dakota Legislative Council, Forty-second Legislative Assembly, 1971, Page 49). Much of the basic research and data of that study was used in the 1971-73 interim study.

The Legislative Council's 1971-73 UND-EB Committee was chaired by Representative Oscar Solberg. He presided over a Committee composed of four legislators and four Ellendale residents who were not legislators. The other legislative members of the Committee were Representatives LeRoy Hausauer and Earl Strinden; and Senators Robert Melland and Earl Redlin. The citizen members of the Committee were the Messrs. J. D. Crabtree, J. B. Graham, Livy Hird, and Gerald Mangin. The Mayor of Ellendale, Mr. E. E. Raymond, acted as a consultant to the Committee and, along with Mr. Kenneth Raschke, Commissioner, State Board of Higher Education, attended nearly every Committee meeting.

The report of the Committee on UND-Ellendale Branch was submitted to the Legislative Council at the biennial meeting of the Council held at Camp Grafton. The report and recommended legislation were adopted for submission to the Forty-third Legislative Assembly by the Legislative Council in November 1972.

Committee Work

The full Committee met seven times. Its first meeting was held April 23, 1971, on the UND-EB campus, and its last meeting was held October 18, 1972, in Bismarck. Most of its meetings were held in Jamestown. In addition, eight official and several unofficial subcommittee meetings were held in Ellendale and Bismarck. The subcommittee also made trips to Denver, Colorado, and Springfield, Missouri.

A memorandum of understanding to use the UND-EB facilities was signed with the Trinity Bible Institute (TBI) of Jamestown, North Dakota, on November 30, 1971 — approximately seven months after the Committee's first meeting and just five months after UND-EB closed. The UND-EB lease between the State of North Dakota and the City of Ellendale, and the sublease between the City of Ellendale and TBI, were signed March 9, 1972. On September 5, 1972, North Dakotans by 68,575 yes votes to 41,350 no votes, approved the deletion of references to UND-EB in the North Dakota Constitution, thus authorizing the final sale of the UND-EB real property under the provisions of Chapter 214 of the 1971 Session Laws. On October 27, 1972, Governor William L. Guy signed a quitclaim deed conveying the UND-EB real property to the City of Ellendale.

The Committee held its initial meeting at the UND-EB library. The Committee toured the campus and became familiar with the available facilities. It was decided to conduct a nationwide advertising campaign promoting the UND-EB facilities. At the same time, the Committee began to investigate and follow-up the many suggestions it received for alternative UND-EB uses from Ellendale citizens, former faculty members, representatives of other state colleges and universities, and from other legislators.

It was the consensus of the Committee that the remaining facilities were ideally suited for some sort of an educational venture, either of the vocational or technical training type or of the private and specialized education type. Possible industrial uses were also considered, although the Committee realized that the facilities did not fully lend themselves to manufacturing utilization.

The State's Congressional Delegation was contacted and all pledged to do what they could on the federal level in seeking a new use or user for UND-EB. Early suggestions for UND-EB included offices for various state agencies, a community college, an industrial park, a post-junior high vocational school, and a joint North Dakota-South Dakota school for high school dropouts. All were considered by the Committee.

The possibility of a combined Department of Health, Education, and Welfare (HEW) and Small Business Administration (SBA) Manpower Training Program was explored. Possibility of a Women's Job Corps Camp was also discussed jointly with the North Dakota State Employment Security Bureau and the State Division of Vocational Rehabilitation.

Advertising Campaign

The Ted R. Smith Advertising and Public Relations Agency, Bismarck, was selected from among four bidders to conduct the national UND-EB advertising campaign. A color brochure was prepared promoting the UND-EB facilities and giving general and specific information concerning North Dakota and the City of Ellendale. This brochure was the main vehicle for the advertising and promotion campaign. Publicity stories concerning the Committee's work were sent to 62 publications across the country, while display and classified advertisements were placed in 28 newspapers, magazines, and specialty publications across the country. The publicity stories and the advertisements in turn generated many feature stories in the national media.

The Committee received 122 inquiries as a direct result of the national advertising campaign. Follow-up letters and brochures were sent to all of the inquirers. If substantial interest was expressed, further examination and investigation was done. The Committee considered each inquiry individually.

Subcommittee Work

During the course of the national advertising campaign, the Committee also explored other possibilities. A subcommittee was appointed to work with TBI and to explore and negotiate its proposal for UND-EB. A subcommittee traveled to Denver, Colorado, to meet with the Mountain Plains Federal Regional Council. The Council consists of the regional heads of six federal agencies: Office of Economic Opportunity; Department of Health, Education, and Welfare; Department of Transportation; Department of Labor; Agriculture Department; and Department of Housing and Urban Affairs.

The subcommittee asked the Council about the possibility, with federal aid, of developing a rural skills improvement and development center at UND-EB. The Council staff investigated this and other possible programs or combinations of programs which might suit UND-EB, but concluded that none were available at present. While in Denver, the subcommittee also met individually with representatives of SBA, the Economic Development Administration, and the U. S. Office of Education.

Another subcommittee traveled to Springfield, Missouri, to visit the national headquarters of the Assemblies of God Church. TBI is an Assemblies of God organization. At Springfield the subcommittee visited with national officers of the denomination and looked at the operations of two of the Church's educational institutions located there.

Another subcommittee meeting was held in Bismarck with a group of state and federal officials, including representatives of the Employment Security Bureau, the State Department of Vocational Education, the State Planning Office, the Business and Industrial Development Department, the Bank of North Dakota, the State Division of Vocational Rehabilitation, the Combined Law Enforcement Council, the State Board of Higher Education, the Department of Public Instruction, and the Veterans' Employment Service. Several possible uses for UND-EB were discussed and explored at this meeting.

Special subcommittee meetings were held with Bank of North Dakota officials in Bismarck to discuss the financial aspects of an offer of some Minnesota educators to create a vocational-technical school at UND-EB.

The full Committee, as well as a subcommittee, met with representatives of the Technical College of the Rockies, a Wyoming school and LeTourneau College, a private school in Texas, concerning their interest in the UND-EB facilities. There were also discussions with officials of Advance Schools, Inc., a correspondence-vocational school operating out of Chicago. Throughout the course of its study the Committee took special efforts to keep Ellendale residents informed of the progress it was making. The Ellendale citizens on the Committee held informational meetings in Ellendale to keep the general public informed. The State Board of Higher Education used its offices to help secure other employment for former UND-EB faculty members.

Lease and Sublease

During the course of its work, the Committee labored under the handicap of uncertainty regarding public approval of a constitutional amendment to remove references to UND-EB from the North Dakota Constitution. The State was not authorized to convey the UND-EB real property until North Dakota voters approved these deletions. This uncertainty led many of the individuals and organizations which made original inquiries concerning the UND-EB facilities to back away from further proposals.

To overcome this handicap, which would have effectively prevented any organization from committing itself to use the facilities, the Committee prepared a lease and a sublease to cover the UND-EB facilities until they could be conveyed. Under this arrangement, the State of North Dakota leased UND-EB to the City of Ellendale. The city in turn subleased the facilities to TBI.

The lease and sublease were designed to provide full fiscal protection for the State while at the same time allowing some certainty to a new occupant of the UND-EB facilities. The lease and sublease provided that the new user of the facilities had to assume payment for all the insurance carried on the facilities and pay into a reserve fund $50,000 to be used for major improvements of the facilities. In addition, the sublessee would be responsible for the maintenance and upkeep of the facilities during the term of the sublease.

The 1971 Legislature authorized conveyance only to the City of Ellendale or a nonprofit industrial corporation thereof. This necessitated the use of a lease first to the City of Ellendale and then a sublease from the city to the new user of the facilities.

On November 30, 1971, the Committee signed a memorandum of understanding with TBI. The memorandum was in effect until the lease and sublease were prepared.

The lease and sublease cover the UND-EB real and personal property. They were officially signed by Governor William Guy, the President of the State Board of Higher Education, the Committee Chairman, the President of TBI, and the Mayor of Ellendale on March 9, 1972. They were effective September 15, 1972, and were to run to June 30, 1973.

Constitutional Amendment

The voters of North Dakota had two opportunities to remove references to UND-EB from the North Dakota Constitution and therefore automatically authorize the UND-EB conveyance. The first came in the April 28, 1972, vote on approval of the proposed new Constitution. The new Constitution omitted specific references to institutions at certain locations. The voters turned down the new document 107,643 no votes to 64,073 yes votes. The next opportunity came on September 5, 1972, when the constitutional amendment to delete UND-EB references was one of two measures on the primary election ballot. The voters approved the measure by 68,575 yes votes to 41,350 no votes, thus authorizing the conveyance.

Real and Personal Property

The 1971 Legislature specifically authorized the conveyance of only the UND-EB real property. Since specific legislative authorization is required before the State Board of Higher Education can convey property, the Committee believes the 1973 Legislature must authorize conveyance of the personal property.

An exact figure for the value of UND-EB's real and personal property is difficult, if not impossible, to obtain. For instance, while a certain building or piece of equipment may have a particular value when used by a state college, it may have little value at all for other uses, and may, in fact, not even be usable for any other pupose. Also, the real property is immovable. Thus, it has value only in Ellendale, and a use had to be found for it there, and only there, to realize even a portion of its worth. This means, for instance, you can't compare what the building would be worth on another college campus, since that particular building will never be on that other campus. Therefore, it can't be said that the UND-EB real property is worth "X" number of dollars in all instances. It may be worth a certain amount only for a particular use in a particular spot, that spot being Ellendale.

The situation regarding the value of the personal property is somewhat the same. Much of the personal property has value only for a particular use just where it is located. In other cases, the property has been appraised at its original cost or its replacement cost, whereas in fact the equipment is depreciated to the extent its original cost is no longer valid or else it is outmoded, and would never be replaced.

The last appraisal of the UND-EB real property, made in 1969 by the Minneapolis firm of Marshall and Stevens, Inc.., reported an insurable value of approximately $1.9 million and a replacement value of approximately $2.6 million. Both

of these figures exclude the buildings lost in the fire. The last inventory of the UND-EB personal property, dated June 30, 1971, listed a total value of approximately $678,000. Former UND-EB officials testified before the Committee, however, that this figure is a liberal appraisal, and that the true value of the personal property is probably closer to $400,000-$450,000.

On October 27, 1972, the Governor signed a quitclaim deed conveying the UND-EB real property to the City of Ellendale. At the same time, a lease modification agreement was signed removing the UND-EB real property from the terms of the lease entered into on March 9, 1972. Thus the UND-EB personal property remains under lease agreement.

Chapter 214 of the 1971 Session Laws authorized the conveyance for a sum not to exceed $50,000. The UND-EB real property was conveyed to the City of Ellendale "for $1.00 and other good and valuable considerations". The other good and valuable considerations the Committee acknowledged was the paying of the insurance premiums on the real and personal property, the assumption of the upkeep and maintenance of the same, the improvements made upon the real property, payments into a reserve fund, and the addition to the community of a growing educational institution which promises to be a valuable economic, academic, and cultural asset to that entire portion of the State. The buildings are not setting in Ellendale empty and rapidly depreciating, as would have been the case had no new occupant been found.

When conveyance of the UND-EB personal property is authorized the State of North Dakota, the City of Ellendale, and TBI will jointly determine which personal property is to remain on site and which is to revert to the State. Provisions have also been made, through the offices of the State Librarian, to see that some of the books in the UND-EB library which are not of use to TBI will be either returned to their donors in Ellendale or redeposited in other libraries around the State. The personal property reverting to the State will be turned over to the State Division of Surplus Property for disposition.

The City of Ellendale, through its sublease and through its instrument of conveyance to TBI, has reserved the right to use certain of the former UND-EB facilities which its citizens have traditionally used throughout the years. TBI has expressed its willingness to cooperate in this and similar matters.

Trinity Bible Institute began its classes in the former UND-EB facilities September 22, 1972, with 320 students. The school's President told the Committee he could foresee good enrollment increases for TBI within the next few years. He also said there was a strong possibility that some small industry would locate in Ellendale in 1973 to utilize student labor and TBI equipment.

Reallocation of UND-EB Grant Lands

Another matter brought to the Committee's attention was the status of the original grant lands allocated by the Federal Government to the State of North Dakota, and in turn allocated by North Dakota for the benefit of an institution at Ellendale.

Section 17 of the Enabling Act made the following grants:

> To the state of South Dakota: For the school of mines, 40,000 acres; for the reform school, 40,000 acres; for the deaf and dumb asylum, 40,000 acres; for the agricultural college, 40,000 acres; for the university, 40,000 acres; for state normal schools, 80,000 acres; for public buildings at the capital of said state, 50,000 acres, and **for such other educational and charitable purposes as the legislature of said state may determine, 170,000 acres;** in all, 500,000 acres. (Emphasis supplied)
>
> To the state of North Dakota a like quantity of land as is in this section granted to the State of South Dakota, and to be for like purposes, and in like proportion as far as practicable.
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> * * * * *
>
> That the states provided for in this act shall not be entitled to any further or other grants of land for any purpose than as expressly provided in this act. And the lands granted by this section shall be held, **appropriated and disposed of exclusively for the purposes herein mentioned, in such manner as the legislatures of the respective states may severally provide.** (Emphasis supplied)

In accordance with Section 17 of the Enabling Act, Section 215 of the North Dakota Constitution was enacted and reads as follows:

> Section 215. The following public institutions of the state are permanently located at the places hereinafter named, each to have the lands specifically granted to it by the United States in the act of congress approved February 22nd, 1889, to be disposed of and used in such manner as the legislative assembly may

prescribe subject to the limitations provided in the article on school and public lands contained in this constitution.

First: The seat of government at the city of Bismarck in the county of Burleigh.

Second: The state university and the school of mines at the city of Grand Forks, in the county of Grand Forks.

Third: The North Dakota state university of agriculture and applied science at the city of Fargo, in the county of Cass.

Fourth: A state normal school at the city of Valley City, in the county of Barnes, and the legislative assembly, in apportioning the grant of eighty thousand acres of land for normal schools made in the act of congress referred to shall grant to the said normal school at Valley City, as aforementioned, fifty thousand (50,000) acres, and said lands are hereby appropriated to said institution for that purpose.

Fifth: The school for the deaf and dumb of North Dakota at the city of Devils Lake, in the county of Ramsey.

Sixth: A state training school at the city of Mandan, in the county of Morton.

Seventh: A state normal school at the city of Mayville, in the county of Traill, and the legislative assembly in apportioning the grant of lands made by congress in the act aforesaid for state normal schools shall assign thirty thousand (30,000) acres to the institution hereby located at Mayville, and said lands are hereby appropriated for said purpose.

Eighth: A state hospital for the insane at the city of Jamestown, in the county of Stutsman. And the legislative assembly shall appropriate twenty thousand acres of the grant of lands made by the act of congress aforesaid for other educational and charitable institutions to the benefit and for the endowment of said institution, and there shall be located at or near the city of Grafton, in the county of Walsh, an institution for the feeble minded, on the grounds purchased by the secretary of the interior for a penitentiary building.

Section 216 of the North Dakota Constitution was also enacted in accordance with Section 17 of the Enabling Act and reads as follows:

Section 216. The following named public institutions are hereby permanently located as hereinafter provided, each to have so much of the remaining grant of one hundred seventy thousand acres of land made by the United States for "other educational and charitable institutions" **as is allotted by law, namely:** (emphasis supplied)

First: A soldiers' home, when located, or such other charitable institution as the legislative assembly may determine, at Lisbon, in the county of Ransom, with a grant of forty thousand acres of land.

Second: The blind asylum shall be known as the North Dakota school for the blind and may be removed from the county of Pembina to such other location as may be determined by the board of administration to be in the best interests of the students of such institution and the state of North Dakota.

Third: An industrial school and school for manual training or such other educational or charitable institution as the legislative assembly may provide at the town of Ellendale, in the county of Dickey, with a grant of forty thousand acres.

Fourth: A school of forestry, or such other institution as the legislative assembly may determine at such place in one of the counties of McHenry, Ward, Bottineau or Rolette, as the electors of said counties may determine by an election for that purpose, to be held as provided by the legislative assembly.

Fifth: A scientific school or such other educational or charitable institution as the legislative assembly may prescribe, at the city of Wahpeton, county of Richland, with a grant of forty thousand acres.

Sixth: A state normal school at the city of Minot in the county of Ward.

Seventh: (a) A state normal school at the city of Dickinson, in the county of Stark. (b) A state hospital for the insane at such place within this state as shall be selected by the legislative assembly, provided that no other institution of a character similar to any one of those located by this article shall be established or maintained without a revision of this constitution. (As amended by Articles 21 and 22 of the amendments to the constitution, both approved and ratified on November 7, 1916 S. L. 1913, cc 96 and 99; S.L. 1915, cc. 84 and 85; S. L. 1917, pp. 407 and 408.)

The 170,000 undesignated acres allotted in Section 17 of the Enabling Act "for such other educational and charitable purposes as the legislature of said state may determine" were awarded by Sections 215 and 216 of the North Dakota Constitution as follows:

Soldiers' Home	40,000 acres
Blind School	30,000
Ellendale	40,000
School of Science	40,000
State Hospital	20,000
	170,000 acres

The School of Forestry and Minot and Dickinson State Colleges do not have any grant lands.

A constitutional amendment authorized by the 1971 Legislative (Ch. 623, 1971 S.L.) and approved by the voters by 68,575 yes votes to 41,350 no votes on September 5, 1972, deleted subsection 3 of section 216 pertaining to an institution at Ellendale.

The Ellendale Fund

As of September 30, 1972, the Ellendale Fund in the State Land Department was as follows:

Cash		
Permanent Fund	$ 17,731.90	$
Interest & Income Fund	33,404.90	
Reserve Fund	2,940.26	54,076.55
Certificates of Deposit		
Reserve Fund		21,000.00
Bonds		
Federal Bonds	$ 11,500.00	
Municipal and School Bonds	353,000.00	
Federal Land Bank Bonds	8,000.00	372,500.00
Farm Loans		288,460.15
Contracts for Deed		
Grant Land	$ 29,554.70	
Acquired Land	2,380.00	31,934.70
Total assets other than land		$ 767,971.40
Estimated Value of Land		
Unsold Land	3,172.52 acres	
Acquired Land	1,462.71 acres	
Land on which contracts cancelled	681.61 acres	
Total	5,316.84 acres	
(Arbitrary value of $55/acre based on Land Department estimate of the average value of unsold acres)		$ 292,426.20
Estimated value of total Ellendale Fund assets		$1,060,397.60

Choice for Reallocation

Section 17 of the Enabling Act specifically granted the State Legislature the authority to determine the purposes of the grant lands. So there appears to be no bar to the 1973 Legislature making a determination of another use for the Ellendale Fund. And, there is no apparent reason why this determination must be embodied in the State Constitution, since it is up to the Legislature to act. Therefore, it appears the 1973 Legislature can make this determination in the form of a regular enactment and not have to use a constitutional amendment.

The Committee believes the subject for legislative determination in this case seems to be where the assets of the Ellendale Fund can and should go.

Section 17 of the Enabling Act gives specific land grants to a school of mines, a reform school, a deaf and dumb asylum, an agricultural college, a university, state normal schools, public buildings at the capital and "for such other educational and charitable purposes as the legislature of said state may determine."

The State Attorney General has ruled (11/23/59) that this phrase should be construed to mean "and for such other **institutions** for educational and charitable purposes." (Emphasis supplied) In other words, the grants must be used for institutions, not just for charitable and educational purposes.

In the same opinion, the Attorney General stated that the legal doctrine of **ejusdem generis** applies in construing this phrase. Under the doctrine of **ejusdem generis,** general words following an enumeration of words with particular and specific meanings are not construed in their widest extent, but are held as applying only to things of the same general kind or class as those specifically mentioned. Following this reasoning, the grants could be allotted to any or all of the type of institutions specifically enumerated in Section 17 of the Enabling Act.

However, Section 216 of the North Dakota Constitution specifically states that "the following named public institutions are . . . each to have so much of the remaining grant of 170,000 acres of land made by the United States for 'other educational and charitable institutions' as is allotted by law", and then proceeds to make the allotments.

The Committee believes the constitutional intent is that the remaining 170,000 acres of grant land be used specifically for the institutions named in Section 216, and not for the others mentioned in the Enabling Act or in Section 215 for which other specific land grant allocations had already been made.

This being the case, it appears the choice of where to allocate the Ellendale Fund narrows to the institutions specifically mentioned in Section 216.

Section 216 originally only mentioned five institutions: Soldiers' Home, Blind Asylum, Ellendale, School of Forestry, and School of Science. Minot State College was added in 1910, and Dickinson State College and the State Hospital were added in 1917. However, of the eight institutions now enumerated in Section 216, only five have land grants.

Section 216 specifically states that the allocations of grant land may be made as allotted by law. Therefore, it would appear the 1973 Legislature can allot the Ellendale Fund to as many of the Section 216 institutions as it may decide. The Committee believes the most equitable reallocation would be on an equal basis to all of the Section 216 institutions.

It is also interesting to note that the Attorney General has said that Section 216 is not a self-executing provision of the Constitution, but needs implementation by the Legislature (AG Opinion, 3/4/71).

Recommendations

The Committee is recommending three bills to the Legislative Council for the 1973 Legislature. One would amend Chapter 214 of the 1971 Session Laws to specifically authorize conveyance of UND-EB personal property as well as that of the real property. Another measure deletes various references to UND-EB in the North Dakota Century Code.

The third bill reallocates the assets of the Ellendale Fund, as administered by the State Land Department, on an equal basis to the seven institutions now listed in Section 216 of the North Dakota Constitution, i.e., the Soldiers' Home, the School for the Blind, the School of Forestry (now NDSU-Bottineau Branch), Wahpeton School of Science, Minot State College, Dickinson State College, and the State Hospital. The bill also directs that the remainder of the insurance proceeds from the 1970 UND-EB fire, which now amounts to approximately $112,000 be deposited in the State's general fund.

Explanation of Legislative Council Bills and Resolutions

SENATE BILLS

Senate Bill No. 2017 — School District Construction Project Approval. This deletes the June 30, 1973, expiration date from the law requiring the Superintendent of Public Instruction to approve school district construction projects over $25,000. The Superintendent bases his approval on the project's usability in the event of district reorganization. (Committee on Budget — Full Budget Section)

Senate Bill No. 2018 — Sample Ballots. This requires publishing, as sample ballots, both the paper ballot and the voting machine ballot. It also requires that sample ballots conform in form and style to the legal publications handbook. (Committee on Budget "A")

Senate Bill No. 2019 — Legal Publications Handbook. This requires the preparation of a legal publications handbook by the Department of Accounts and Purchases with the advice of a committee composed of the Secretary of State, the Director of the Department of Accounts and Purchases, the Director of the Department's Central Duplicating Service, and others representing county auditors, printers, and newspapermen. The handbook would contain guidelines and samples of the form, style, and content for legal advertising, legal notices, minutes, and other such items, including sample ballots, required of or published by any state governmental entity or political subdivision. (Committee on Budget "A")

Senate Bill No. 2020 — Sixth-Class Printing. This requires that all sixth-class printing projects not done by the Department of Accounts and Purchases be let on bids or quotations. (Committee on Budget "A")

Senate Bill No. 2021 — Budget Report. This allows for the duplication, printing, or other satisfactory reproduction of the official budget report. (Committee on Budget "A")

Senate Bill No. 2022 — Classes of State Printing. This amends the definition of first-class printing to allow the exception, in certain instances, of some legislative bills and resolutions. The third class is amended to include only reports required by law rather than both required and voluntary reports. (Committee on Budget "A")

Senate Bill No. 2023 — Where Public Printing Done. This requires that, where practicable, all state, county, and other public printing be done in North Dakota. (Committee on Budget "A")

Senate Bill No. 2024 — Legislative Calendars. This repeals the law dealing with legislative calendars, thus leaving their publication up to the Legislature. (Committee on Budget "A")

Senate Bill No. 2025 — Investment of Endowment Funds by Institutions of Higher Education. This gives colleges and university administrators authority to invest endowment funds and protects the administrators from liability in the event of financial loss when such investments are made in a prudent manner. (Committee on Budget "B")

Senate Bill No. 2026 — Educational Finance. This bill provides for an increase in the Foundation Aid payment to $540 per pupil for increased transportation payments, and for the distribution of personal property payback moneys earmarked for school districts through the Foundation Program. Tax levy limitations in most high school districts would be reduced and several special levies would be eliminated. Weighting factors for high school districts would be changed to more closely reimburse schools for actual costs. Fifteen mills of local property taxes would be equalized. An appropriation of $129,200,000 for the biennium is included. (Committee on Education)

Senate Bill No. 2027 — Change in Assessment Date. This bill changes the assessment date from April 1 to February 1 and changes the meeting dates for the various boards of equalization and the timetable for various assessment procedures. (Committee on Finance and Taxation)

Senate Bill No. 2028 — Written Notice of Increased Assessment. This bill provides that when any assessor or board of equalization, or any combination thereof, increases the net assessed valuation by more than 15 percent and such increase amounts to an increase of $100 or more of such

valuation, written notice must be sent to the taxpayer. (Committee on Finance and Taxation)

Senate Bill No. 2029 — Tax Statements. This bill requires county treasurers to mail real estate tax statements annually by December 31. (Committee on Finance and Taxation)

Senate Bill No. 2030 — Merit System Coverage to Human Service Centers. This requires the Merit System Council to provide Merit System coverage to mental health and retardation service units, human service centers, or other units resulting from combinations of such centers and other state agencies or political subdivisions, upon the request of such center or unit. (Committee on Government Administration)

Senate Bill No. 2031 — No-Fault Automobile Insurance. This bill requires certain first-party benefits for persons injured in automobile accidents and requires insurance companies to offer optional supplemental coverage. Recourse against negligent parties would be preserved. Certain limitations would be placed upon recoveries for intangible losses in less serious cases, and there would be certain limitations upon hospital benefits and income loss benefits. The bill also provides for arbitration between insurance companies. The bill would be effective on January 1, 1974. (Committee on Industry and Business)

Senate Bill No. 2032 — Administration of Rural Rehabilitation Corporation Assets. This provides for administration of the North Dakota Rural Rehabilitation Corporation assets by the Bank of North Dakota if the assets are released to the State by Congress. (Committee on Industry and Business)

Senate Bill No. 2033 — Traffic Offenses. This provides alternative methods for the administrative disposition of all non-criminal traffic offenses. A point system is established to provide for mandatory suspension of an operator's license when a certain number of points, received as a result of traffic violations, have accumulated on the licensee's driving record. (Committee on Judiciary "A")

Senate Bill No. 2034 — Sale of University and School Lands. This authorizes the North Dakota Outdoor Recreation Agency to determine those tracts of University and School land that have exceptional scenic, archaeological, historical, recreational, conservational, or wildlife enhancement value. It also prohibits the sale of these lands unless a court finds that substantial interests of the schools and the State require such a sale. (Committee on Natural Resources)

Senate Bill No. 2035 — Water Management Districts. This requires that all land in North Dakota be within water management districts no smaller than countywide in size by July 1, 1974, and provides for consolidation and division of water management districts. (Committee on Natural Resources)

Senate Bill No. 2036 — Buried Transmission Facilities. This establishes a card file system in the offices of the county registers of deeds to enable excavators and others to easily locate transmission facilities such as pipe and cable buried in each county. (Committee on Political Subdivisions)

Senate Bill No. 2037 — Boards of Budget Review. This changes boards of budget review law by, among other things, giving the public-at-large the majority on the boards, lengthening board terms from one to three years, providing compensation for board members at the same rate as school board members, giving the boards authority over the line items in the city, park board and school district budgets they consider, and giving the boards more time to review the budgets. (Committee on Political Subdivisions)

Senate Bill No. 2038 — Expenditure of Revenue Sharing Payments by Local Units of Government. This enables local units of government to spend revenue sharing funds received under the Fiscal Assistance to State and Local Governments Act even though disbursement of such funds is not included in the local unit's current budget. (Committee on Revenue Sharing)

Senate Bill No. 2039 — Revenue Sharing Trust Fund. This creates a revenue sharing trust fund in the State Treasury for deposit of all payments received by the State under the Fiscal Assistance to State and Local Governments Act. (Committee on Revenue Sharing)

Senate Bill No. 2040 — Emergency Commission. This changes the membership of the Emergency Commission by dropping the Agriculture Commission and adding the State Treasurer. (Committee on State and Federal Government)

Senate Bill No. 2041 — Gubernatorial Appointments. This removes abolished boards from the list of those to which the Governor appoints members. (Committee on State and Federal Government)

Senate Bill No. 2042 — Abstracts of Operating Records. This bill provides that driving records which are released contain only convictions of

traffic offenses and suspensions, revocations, and restrictions of driving privileges. Only that portion of an officer's accident report which does not disclose the opinion of the reporting officer would be furnished upon request, and then only when the report shows that death, personal injury, or property damage of $200 or more resulted from the accident. (Committee on Transportation)

Senate Bill No. 2043 — UND - Ellendale Branch Property. This authorizes the sale of the UND - Ellendale Branch personal property. (Committee on UND - Ellendale Branch)

Senate Bill No. 2044 — Tobacco and Minors. This prohibits the sale to and use by a minor of tobacco in any form. (Committee on Judiciary "B")

Senate Bill No. 2045 — Criminal Law Revision. This creates a new criminal code defining and classifying criminal offenses, providing defenses to criminal charges, and delineating sentencing criteria. The bill abolishes the death penalty, eliminates mandatory minimum sentences, restricts use of deadly force in apprehending alleged criminals, and consolidates theft laws. (Committee on Judiciary "B")

Senate Bill No. 2046 — Home Rule Powers. This prohibits a home rule city from superseding state criminal laws. (Committee on Judiciary "B")

Senate Bill No. 2047 — Sexual Offenses. This is one of three alternative versions of sexual offense definitions. Of the three, this one most closely resembles current law. (Committee on Judiciary "B")

Senate Bill No. 2048 — Sexual Offenses. Another of the three alternatives, this is the widest departure from current law. (Committee on Judiciary "B")

Senate Bill No. 2049 — Sexual Offenses. This third alternative is a combination of the other two. (Committee on Judiciary "B")

Senate Bill No. 2050 — Flags. This repeals sections of state law prohibiting the display of red or black flags. (Committee on Judiciary "B")

Senate Concurrent Resolution No. 4001 — Duplication Between Comprehensive Mental Health Centers and Area Social Service Centers. This directs the State Departments of Health and Social Services to coordinate and consolidate wherever possible the services of existing centers during the 1973-75 interim. It asks both Departments to deliver a high level of staff assistance and direction to encourage progress in this endeavor. This resolution also provides that reports be made to the Legislative Council or a subcommittee on the Council regarding progress in this area during the next biennium. (Committee on Government Administration)

Senate Concurrent Resolution No. 4002 — Rural Rehabilitation Corporation. This requests Congress to unconditionally release to North Dakota the assets of the North Dakota Rural Rehabilitation Corporation. (Committee on Industry and Business)

Senate Concurrent Resolution No. 4003 — Unified Court System. This proposes a new article to the State Constitution establishing a unified court system and providing for the qualification, election, and voter confirmation of justices and judges. (Committee on Judiciary "A")

Senate Concurrent Resolution No. 4004 — Sentencing in DWI Cases. This resolution expresses the support of the Legislative Assembly for the imposition of strong sentences by the courts for persons convicted of driving while intoxicated. (Committee on Transportation)

Senate Concurrent Resolution No. 4005 — Land Use Planning and Zoning. This resolution directs the Legislative Council to study land use planning and zoning at all governmental levels in the State. Among other things, the study would cover statewide zoning, power plant siting, feedlot control, recreational area planning, and soil and water conservation. (Committee on State and Federal Government)

HOUSE BILLS

House Bill No. 1018 — Seed Department Fiscal Practices. This streamlines voucher handling procedures between the State Seed Commissioner and the Agriculture Commissioner. Vouchers once signed by the State Seed Commissioner could be presented directly to the Department of Accounts and Purchases rather than first being approved by the Agriculture Commissioner. (Committee on Budget — Full Budget Section)

House Bill No. 1019 — Biennial Reports. This changes many of the statutes concerning state agency biennial reports so that, among other things, the Secretary of State compiles just one collection rather than two separate groups, and the reports cover the two complete fiscal years of a biennium rather than one fiscal year from two different bienniums as is now the case. (Committee on Budget "A")

House Bill No. 1020 — Game and Fish Proclamations. This removes the requirement that the Governor's game and fish proclamations be published in each county's official newspaper, and allows instead for the distribution of copies of the proclamations with licenses. (Committee on Budget "A")

House Bill No. 1021 — Minutes of Political Subdivisions. This requires that the minutes of the proceedings of political subdivisions required to be published be delivered to the newspaper within seven working days of the proceedings. (Committee on Budget "A")

House Bill No. 1022 — Newspaper Definitions. This changes the definitions of legal and official newspapers to make them identical, except that an official newspaper would have to maintain its principal editorial office in the county where it is a candidate for official newspaper. (Committee on Budget "A")

House Bill No. 1023 — Notices of Leasings and Sales. This allows the sale or leasing of state land or mineral acres to proceed despite inadvertent errors in or omission of the published notice. (Committee on Budget "A")

House Bill No. 1024 — Higher Education Fiscal Practices. This streamlines the fiscal practices in the Board of Higher Education office and discontinues Board office maintenance of financial records also maintained at the colleges and universities. The bill also provides that the Board shall require monthly financial statements and shall have authority to examine, review, and audit the books and records of those institutions. (Committee on Budget "B")

House Bill No. 1025 — Out-of-State Travel. This requires the presidents of state institutions of higher learning to obtain written approval from the Governor and the Board of Higher Education prior to out-of-state travel. All other employees in those same institutions could travel out of state upon prior approval from their supervisor and the president of the institution. (Committee on Budget "B")

House Bill No. 1026 — Teacher Certification. This bill changes the membership of the Teachers' Professional Practices Commission (TPPC) to include representatives of school boards and school administrators as well as teachers. The TPPC would advise the Superintendent of Public Instruction on teacher certification. The bill contains an appropriation of $20,000 for the biennium. (Committee on Education)

House Bill No. 1027 — Tax Appeals Board. This bill creates a seven-member tax appeals board appointed by the Governor to hear appeals from decisions of county commissioners on tax abatements. The bill includes a biennial appropriation of $52,200. (Committee on Finance and Taxation)

House Bill No. 1028 — Neglect of Duty By Taxing Officers. This bill clarifies procedures and penalties to be used against taxing officers and employees who neglect or refuse to do their duties. (Committee on Finance and Taxation)

House Bill No. 1029 — Basis For Computation of Property Taxes. This bill changes the computation of net value for property taxes to 10 percent, except for property assessed by the State Board of Equalization, and reduces statutory bonded indebtedness limitations. (Committee on Finance and Taxation)

House Bill No. 1030 — Transfer Vocational Rehab to State Social Service Board. This transfers responsibility for the State Division of Vocational Rehabilitation from the State Board of Public School Education to the Social Service Board. The Division would be administered under the general supervision and direction of the Social Service

Board through its Executive Director and by a Division Director appointed by the State Board. (Committee on Government Administration)

House Bill No. 1031 — Human Service Centers. This provides that human service-related agencies may enter into agreements to provide services from one main office called a Human Service Center. The definition of human services includes health, education, manpower, social, vocational rehabilitation, and aging. (Committee on Government Administration)

House Bill No. 1032 — Loans on Real Estate. This places state banks on the same basis as federal banks by increasing the amount which could be loaned from 80 percent to 90 percent and the term from a maximum of 25 years to 30 years on real estate loans. (Committee on Industry and Business)

House Bill No. 1033 — Leasing of Personal Property. This allows a bank to lease personal property to a customer for not to exceed 10 years rather than the current five-year limitation. (Committee on Industry and Business)

House Bill No. 1034 — Irrigation Development Fund. This authorizes the Industrial Commission to issue up to $10 million in debentures through the Bank of North Dakota to provide funds to participate with other banks and lending agencies in loans for irrigation development. (Committee on Industry and Business)

House Bill No. 1035 — Bank of North Dakota Loans. This provides that the Bank of North Dakota must hold the first lien on real estate loans to farmers by being first in place, but would not require a "duly recorded first mortgage" which has been interpreted to mean first in time as well as first in place. It also provides that the Bank of North Dakota may make loans to, purchase notes or debentures issued by, and participate in loans made by all federally chartered financial organizations; may make loans to, and purchase notes or debentures issued by savings and loan associations and credit unions; and may make loans on real estate security in excess of 30 percent of its capital, and 20 percent of its deposits, if such loans are insured or guaranteed by the United States, its agencies, or a private insurance company. (Committee on Industry and Business)

House Bill No. 1036 — Removal of Names from Petition. This provides that, prior to the Secretary of State's certification that recall, initiative, or referendum petitions contain enough signatures, a person could have his signature removed from a petition by requesting the Secretary of State, in writing, to do so. (Committee on Legislative Procedure and Arrangements)

House Bill No. 1037 — Relocation Assistance. This is a model law providing relocation assistance for persons and businesses displaced by governmental construction programs. (Committee on Model Laws and Intergovernmental Cooperation)

House Bill No. 1038 — Public Defender. This model law creates a statewide public defender program for indigent persons charged with crime. The Defender General, an executive officer, would be appointed by the Governor to head the program. (Committee on Model Laws and Intergovernmental Cooperation)

House Bill No. 1039 — Community Property. This uniform act provides for the disposition of community property where one of a married couple dies in North Dakota and owns, at death, community property acquired in another state, or property acquired elsewhere which is traceable to community property funds. (Committee on Model Laws and Intergovernmental Cooperation)

House Bill No. 1040 — Uniform Probate Code. This adopts the Uniform Probate Code in North Dakota. The Code is designed basically to make probate quicker and easier. (Committee on Model Laws and Intergovernmental Cooperation)

House Bill No. 1041 — Game and Fish Revision. This bill creates Title 20.1, which includes the edited and rearranged game and fish laws currently contained in Title 20 and Chapter 61-27, except for sections transferred to other parts of the Code or deleted because they are obsolete. (Committee on Natural Resources)

House Bill No. 1042 — State Legislative Apportionment. This reapportionment plan provides for 37 legislative districts with 50 Senators and two Representatives per Senator. The most populous district is 2.0 percent above the average population per Senator, and the least populous district is 1.7 percent below the average population per Senator. The deviation ratio is 1.04 to 1. Guiding principles considered most important in selection of this reapportionment plan were the "one-man, one-vote" requirement and "communities of interest". (Committee on Reapportionment)

House Bill No. 1043 — Park Advisory Council. This amends state law to delete references to the State Park Advisory Council which was abolished by the 1971 Legislature. (Committee on State and Federal Government)

House Bill No. 1044 — Trade Commission. This repeals the statutory authorization of the North Dakota Trade Commission. (Committee on State and Federal Government)

House Bill No. 1045 — Natural Resources Council. This repeals the statutory authorization for the Natural Resources and Environmental Management Council. (Committee on State and Federal Government)

House Bill No. 1046 — Soldiers' Home Contributions. This authorizes a membership contribution charge at the Soldiers' Home. (Committee on State and Federal Government)

House Bill No. 1047 — Attorney General Review of Certain Bills. This requires the Attorney General to review each legislative bill providing for the sale or exchange of state-owned land or for state purchase of land. This is designed to ensure a sufficient description of the land and the parties to the transaction. (Committee on State and Federal Government)

House Bill No. 1048 — Auditing Board Changes. This changes the function of the State Auditing Board to that of an appeals board. Its audit functions would be assumed by the Director of the Department of Accounts and Purchases, who would no longer be a member of the Board. (Committee on State and Federal Government)

House Bill No. 1049 — Judicial Retirement. This provides that Supreme Court and District Court judges elected in the future enroll in the Public Employees Retirement System. Incumbent judges are given several options regarding their retirement program. (Committee on State and Federal Government)

House Bill No. 1050 — Highway Tax Distribution Fund. This bill provides that the cities' share of the highway tax distribution fund be allocated according to population, with cities under 5,000 receiving 125 percent of the state per capita average and the balance distributed equally on a per capita basis to cities of 5,000 or more. (Committee on Transportation)

House Bill No. 1051 — UND - Ellendale Branch References. This deletes scattered references to the University of North Dakota - Ellendale Branch in State law. (Committee on UND - Ellendale Branch)

House Bill No. 1052 — UND - Ellendale Branch Funds. This reallocates the Ellendale Grant Land Fund assets to other state institutions and directs the deposit of the remaining UND - Ellendale Branch fire insurance proceeds in the State's general fund. (Committee on UND - Ellendale Branch)

House Concurrent Resolution No. 3002 — Smaller Juries. This proposes a constitutional amendment reducing jury size to six persons. The Legislature is authorized to increase the number of jurors to twelve and to provide that a non-unanimous decision may be reached by at least 80 percent of the jurors. (Committee on Judiciary "A")

House Concurrent Resolution No. 3003 — Probate Code Study. This calls for continued study of the Uniform Probate Code. The Code, as introduced in the 1973 Legislature, had a July 1, 1975, effective date. (Committee on Model Laws and Intergovernmental Cooperation)

House Concurrent Resolution No. 3004 — Impact of Federal Revenue Sharing Upon Programs of the State and its Local Units of Government. This directs the Legislative Council to study the impact of revenue sharing upon programs of the State and its local units of government, and to study alternative formulas for distribution of revenue sharing funds to local units of government. (Committee on Revenue Sharing)

House Concurrent Resolution No. 3005 — East-West Airline Service. This resolution urges the Civil Aeronautics Board to grant authority to a second airline to serve North Dakota on east-west routes. (Committee on Transportation)

House Concurrent Resolution No. 3006 — Criminal Law Study. This directs the Legislative Council to continue its study of the State's criminal laws begun in the 1971-73 interim. (Committee on Judiciary "B")