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SUMMARY

BRIEFLY - - - THIS REPORT SAYS

BUDGET

The Council acted upon requests of the State Social Service Board to spend federal funds matched by private moneys and of the Main Experiment Station and branch stations to spend local funds for agricultural research in North Dakota. The Council heard reports of the State Social Service Board regarding its efforts to develop an improved system for reimbursing vendors of medical services, reports from the Director of Institutions regarding future space needs of the institutions and departments under his control, and a survey of the utilization of the space within the State Capitol and State Office Building. The Council authorized the Board of Higher Education to enter into reciprocal agreements with other states to eliminate nonresident tuition at the state's colleges and universities and to eliminate nonresident tuition for in-state students desiring to attend out-of-state institutions of higher education. The Council reviewed instances where agencies did not comply with legislative intent and heard reports regarding employee compensation, the State Foundation Program budget, and the State Department of Social Services. The Council toured the various state institutions to review their plant improvement needs and to hear reports regarding employee salary problems. In addition, the Council recommended the establishment of a Central Personnel Division on a pilot basis, determination of the cost impact on state agency budgets resulting from establishment of coal and other energy-related industries, and budgetary relief for the State Park Service.

The Council studied the Experiment Stations and the Cooperative Extension Service. After tours, reports and a performance review by Arthur Andersen & Co., the Council suggested these units place priority on the importance of continually reviewing their work to ensure that they are responsive to the needs of agriculture and may change when a more efficient method of delivering services is desirable. The Council recommends that emphasis be placed upon communications with those utilizing the services of the Cooperative Extension Service and Main Experiment Station. It also emphasizes the importance of those involved in research being knowledgeable and cognizant of cost factors while conducting research projects.

The Council recommends that revenue bonds not be issued on the state's colleges, universities, or junior college campuses for amounts in excess of the cost of the facility to be constructed. The Council also recommends a \$200,000 pre-planning fund from which moneys can be made available for the preparation of preliminary plans prior to the time that the Legislature appropriates moneys for the construction project. The Council recommends that the Department of Accounts and Purchases proceed to implement an improved accounting and reporting system to accommodate program budgeting

and the needs of management for an improved accounting and reporting system in State Government.

The Council reviewed 66 audit reports submitted by the State Auditor's office. Other interim activities included a study of the current practices regarding the handling of interest earned on dedicated funds on deposit in the State Treasury and a study of the bonding of public employees. The Council recommends a bill permitting those agencies operating entirely from special funds to receive a portion of the interest earned on such funds if certain requirements are met. It also recommends a bill revising sections of the law relating to the bonding of public employees.

The Council contracted with accounting and management services firms to conduct performance reviews of the North Dakota Mill and Elevator Association, North Dakota State University, and the North Dakota State Park Service. The performance review of the Mill and Elevator Association was conducted to evaluate the performance of the mill operations and to ensure that associated programs address the various managerial and operational needs. The report, as prepared by the firm conducting the review, makes recommendations for improved grain procurement and terminal operations, flour mill operations and flour sales and marketing, and financial management and organization. The purpose of the performance review of North Dakota State University was to conduct an operational audit of the administrative practices of the University. The firm conducting this review made recommendations for improved organizational structure, academic and business planning, financial management, and resource utilization and controls. The Council also studied procedures for implementation of the recommendations and cost estimates to be incurred upon implementation of the recommendations. The examination of the State Park Service resulted in recommendations for improvements in organizational structure, personnel utilization, equipment usage and inventory control, and accounting procedures.

EDUCATION

The Council recommends the continuation of the basic concepts of educational finance established in 1973 but with some modifications. Per-pupil payments would be increased, a new formula for state transportation payments would be used, state aid would be extended to include kindergarten and summer school programs, and the population limitation on unlimited mill levies would be deleted in a comprehensive finance bill recommended by the Council. The Council also recommends bills to permit mill levies for transportation costs and kindergarten programs, to place school district oil and gas tax allocations in county equalization funds, to encourage the charging and collection of school district tuition, to change the vote required to approve school bond issues and building fund levies, to require school activities funds, to provide for proportionate payments for nonpublic school students who take public special education courses, and to require that statements of consideration be filed with deeds. To meet the needs of school districts in coal development areas, the Council recommends bills to strengthen the State School Construction Fund. Because of the importance of equal property assessments, the Council recommends a study be conducted of the feasibility of assessing by school district or some other boundary lines.

After studying methods to encourage cooperation among school districts in vocational programs, the Council recommends bills to authorize multi-

district vocational education centers, to permit the counting for accreditation purposes of approved courses taken in cooperative vocational education programs, to provide for state aid for transporting pupils to and from approved cooperative vocational education centers, and to permit a mill levy for cooperative vocational education programs.

The Council studied the education of deaf-blind children and recommends that the program be moved from the Grafton State School to the School for the Blind in Grand Forks. The Council also recommends a bill to give the Director of Institutions flexibility in the placement of deaf-blind children.

The Council reviewed the present method of state aid for junior colleges and recommends a new formula based upon weekly enrollment to provide flexibility for part-time and vocational students who do not fit the usual semester or quarterly pattern. The Council also recommends bills to provide for the annual review of junior college budgets by the State Board of Public School Education and for the verification of students for the calculation of state aid payments by that Board. After studying the structure of education in North Dakota, the Council recommends that attention be given to constitutional revision, and therefore two alternative concurrent resolutions are submitted which would rewrite the education sections.

FINANCE AND TAXATION

The Council reviewed alternative methods of taxing coal development with particular attention being given to finding a method of meeting the costs of coal development impact incurred by the State and the various political subdivisions. The Council recommends a bill to provide for a severance tax on coal of 10 per cent of value or 25 cents per ton, whichever is more, and to provide that the revenue be distributed on a formula with 10 per cent going to the political subdivisions, 50 per cent to a special trust fund, and 40 per cent to the State General Fund. The Council also recommends a bill to provide for a privilege tax on coal development plants which use over 2 million tons of coal annually. The rate of the privilege tax would be 10 cents per thousand cubic feet of gas produced and three-tenths of a mill per kilowatt hour of electricity produced. A third recommended bill would establish a state impact program to return revenues to the political subdivisions for impact expenditures.

After studying taxation on Indian reservations, the Council recommends a bill to authorize agreements between state officials and the Indian tribes for the collection of certain taxes on reservations in order to eliminate tax-free islands and to eliminate the need for merchants to differentiate between their Indian and non-Indian customers for taxation purposes.

As a result of other studies, the Council recommends no legislation for tax relief for beginning farmers and ranchers. Testimony from farm organizations led to the conclusion that interest costs constitute a far more serious problem than taxes for beginning farmers and ranchers. The Council also recommends no legislation concerning sales, market, and productivity studies. After considering a basic estate tax exemption of \$60,000 similar to that provided by federal law, the Council concluded that the resulting revenue would not justify the continuation of the estate tax, and therefore recommends a bill to repeal the estate tax.

GOVERNMENTAL IMPACT COSTS OF ENERGY DEVELOPMENT

The Council reviewed information and heard reports from the departments and institutions reporting amounts included in their budget requests which relate to work required of their offices because of coal and other energy development. The impact costs for state agencies, departments, and institutions included in the review amounted to an estimated \$14,357,219 during the next biennium, with \$8,554,890 to come from the State General Fund.

The Council recommends that the cost impact information be presented to the Governor's office, the Office of the Executive Budget, and the Senate and House Appropriations Committees to apprise them of the state level costs which will probably occur during the next biennium as a result of energy development in the State. The Council recommends that an effort be made to avoid any unnecessary duplication in the budget requests of such agencies, departments, and institutions.

INDUSTRY AND BUSINESS

The Council studied the Workmen's Compensation Fund and found that the reserves maintained within the fund are adequate to meet estimates of future claims and liabilities. The Council also studied the exclusive fund concept of providing workmen's compensation coverage and found that the present system is efficient and effective and that allowing employers to obtain workmen's compensation coverage through private insurance carriers would not further improve upon program efficiency.

The Council recommends two bills to expand the coverage of workmen's compensation. One bill would require agricultural employers to provide workmen's compensation coverage, with certain exemptions to coverage for exchange work and for relatives and dependents. The other bill would require members of the clergy and employees of religious organizations to be provided workmen's compensation coverage.

After studying the present level of workmen's compensation benefits to injured employees, the Council recommends a change in the benefit formula to improve benefits to employees who are temporarily or permanently totally disabled. The bill would establish a benefit level of 66 2/3 per cent of the claimant's weekly wage, subject to a maximum payment of 100 per cent of the state's average weekly wage and a minimum payment of 60 per cent of the state's average weekly wage.

The Council recommends a bill to establish an advisory council to the Workmen's Compensation Bureau. The advisory council would consist of seven members and would assist the Bureau in formulating policies for administration of the program.

The Council studied state implementation of the Federal Occupational Safety and Health Act and concluded that the State should not implement or administer the Federal Act.

The Council considered the present interest rate situation in the State and its effects on the availability of loanable funds from financial institutions. The Council recommends a bill to authorize the State Banking Board to establish maximum interest rates payable on deposits, subject to interest rate maximums applicable to members banks of the Federal Reserve System. The

bill also maintains the present three percent differential between the interest rate payable on deposits and the interest rate chargeable on loans.

The Council studied the State's labor laws and recommends several bills to eliminate duplicate or obsolete labor provisions, improve existing labor procedures, and establish new labor legislation. These bills were proposed by the Labor Commissioner and concern wage collection, child labor provisions, remedies for fraudulently securing benefits from an employer, remedies for unfair labor practices, notification to employers of pending changes in minimum wage orders, and equal employment opportunity.

The Council recommends an Equal Employment Opportunity Act which would prohibit discrimination in employment practices on account of race, color, religion, national origin, sex, age, or marital status and would enable the State Labor Department to act as a referral agency for employment discrimination charges filed with the Federal Equal Employment Opportunity Commission under the Federal Equal Employment Opportunity Act.

The Council recommends two bills to fill a void in public employment relations legislation in the State. One bill would enable municipal fire fighters to organize for the purpose of collective bargaining. Impasses in negotiation would be resolved through procedures culminating in binding arbitration, and strikes by municipal firefighters would be prohibited. The other bill would enable state employees to organize for the purpose of collective bargaining. Negotiations would be conducted with either the Governor or the agency head, and impasses would be resolved through mediation and factfinding. Strikes by state employees would be expressly prohibited. After studying agricultural employment relations, the Council makes no recommendation for establishment of agricultural employment relations procedures because no imminent need was found to regulate agricultural employee-employer relations.

INSTITUTIONAL ORGANIZATION

The Council reviewed the organizational relationship between the Director of Institutions' office and the institutions under its control, the School for the Deaf, the School for the Blind, the Grafton State School, the Industrial School, the State Penitentiary, the State Farm, and the San Haven State Hospital. The Council toured these institutions, heard reports from state departments and agencies regarding their relationships with such institutions, and reviewed the organizational relationship of similar institutions in other states to their supervisory office in their respective state capitols. The Council recommends the transfer of the Grafton State School and San Haven State Hospital from under the supervision of the Director of Institutions to the Division of Mental Health and Retardation of the State Health Department. The purpose of this recommendation is to accommodate the de-institutionalization program at the Grafton State School by placing it under the same state department that has a relationship with the state health districts and the comprehensive mental health and retardation centers on the local level. The Council makes no recommendations for broad governmental reorganization regarding the state's charitable and penal institutions since reorganization is first needed on the state level, and some of this reorganization can only take place with constitutional revision.

JUDICIARY

The Council carried out an in-depth study of all of the State's penal institutions and recommends several bills, including a bill to create a Prison Industries Fund and a bill to increase penalties for possession of controlled substances by penal institution inmates, and delivery of controlled substances to those inmates. The Council recommends a bill to extend the authority of judges to sentence convicted youths to the Industrial School, even though the maximum two-year sentence would run beyond the youth's 18th birthday. Repeal of the prohibition of use of tobacco by minors is also recommended by the Council, as well as the extension of the authority of the juvenile court to issue orders which would affect youths until their 20th birthday if the youth committed the delinquent act to which the order was related prior to the youth's 18th birthday.

The Council studied the feasibility of creating a Department of Public Safety and does not recommend creation of such an agency. However, the Council recommends a bill to create a Motor Vehicle Division in the Highway Department, consisting of the current Department of Motor Vehicles, the Drivers' Licensing Division, and the Truck Regulatory Division. In addition, the Council recommends that the Governor have the flexibility to continue a position on his staff with responsibility for coordination of state level public safety functions.

To assist local law enforcement, particularly those local law enforcement agencies in areas where rapid resource development is expected, the Council recommends a bill to provide state financial assistance to local law enforcement. The bill would grant funds to cities over 2,000 on a population formula basis and would make grants available, upon application, to all cities for partial funding of contracting policing programs.

The Council was interested in some necessary statutory revision and recommends a bill making extensive revisions to the traffic violation administrative disposition and "point system" bill passed during the 1973 Session. The bill assigns "points" to numerous minor offenses which were omitted from the previous bill. The bill creates two new offenses known as "drag racing" and "exhibition driving" and makes numerous other changes.

The Council reviewed all of the criminal statutes in the Century Code and recommends a bill to amend or repeal each one. The amendments are designed primarily to insert the appropriate offense classification based on the criminal offense classification format passed during the last Session. The Council also recommends a bill to revise the new Criminal Code passed during the last Session in accordance with criticisms and suggestions received during this legislative interim.

Control of obscene materials and performances was considered by the Council, and the Council recommends a bill defining obscenity in accordance with the latest United States Supreme Court decisions. The bill provides for a civil action to determine the obscenity of materials which action would be a prerequisite to a criminal action for dissemination of obscene material.

The Council also recommends that continuing studies be made in the area of mental illness commitment procedures, the desirability of appellate review of sentences, and the extent to which criminal liability can arise as a result of violation of administrative regulations.

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 makes recommendations in numerous areas.

The Council recommends numerous rules amendments dealing with a wide range of legislative procedures. Amended rules ensure a recorded roll call vote on any floor action resulting in final disposition of a bill and require committee reports for indefinite postponement to be placed on the calendar (Sixth Order) for the next legislative day. Committee reports for "do pass" will also result in the measure being placed directly on the next day's calendar, without necessity of adopting the committee report. Other rules amendments provide for an earlier deadline for introduction of most resolutions, increase the minimum below which it is unnecessary to rerefer bills with appropriations sections to an Appropriations Committee, and increase the authorized number of House committee clerks by five. The Council also recommends the continuation of the legislative internship program at the same level as during the last Session.

MEDICAL EDUCATION AND GOVERNMENT ADMINISTRATION

The Council reviewed the efforts of the area social service centers and comprehensive mental health and retardation centers to consolidate and coordinate the delivery of human services on the local level during the interim. The Council heard reports indicating that all eight regions of the State had benefited from the encouragement of the State Social Service Board and the State Department of Health to improve the level of cooperation in the delivery of human services. In the Williston, Dickinson, Bismarck, and Devils Lake areas, efforts have been successful to deliver human services from a single location. The Council recommends further cooperation and consolidation in the future and recommends a study to determine the feasibility of a State Department of Human Services. At each meeting the Council heard progress reports from the University of North Dakota medical School in its development of a four-year medical school program. The Council approved contracts with the University of Minnesota Medical School for 35 students per year and contracts with the Mayo Clinic Medical School for five students per year. The Council recommends a bill to improve the level of communications between the Medical School Advisory Board and the communities where the area health education centers are located by including the four directors of the area health education centers on the Medical School Advisory Board.

The Council found a shortage of veterinarians, optometrists, and dentists in the State of North Dakota and that students have a difficult time pursuing an education in these programs unless a contract to accept such students exists between the State of North Dakota and an out-of-state institution offering such programs. The Council recommends an expansion of the veterinarian student program and the establishment of a program whereby the Board of Higher Education would contract with out-of-state institutions for the education of students interested in the fields of dentistry and optometry. The Council also recommends that a portion of the amount advanced by the Board of Higher Education for such student must be repaid by such student unless he returns to North Dakota to practice.

The Council also reviewed the action taken by the State Social Service Board to facilitate the transfer of functions to the Division of Vocational

Rehabilitation. The Council recommends a study of the benefits that have been derived from the transfer of the Division of Vocational Rehabilitation to the State Social Service Board. In addition, the Council heard reports regarding the health problems of off-reservation Indians in North Dakota.

NATURAL RESOURCES

The Council studied the extent of land disturbing activities in the State and makes no recommendation as to the feasibility of requiring reclamation of areas affected by such activities. However, the Council urges close scrutiny be given to surface mining operations and land disturbing activities to ensure that the State's natural resources are protected.

Due to the substantial effects the construction of transmission lines would have on the environment and agriculture, the Council recommends a bill to require the Public Service Commission to regulate the siting of energy conversion and transmission facilities. The Public Service Commission would receive long-range forecasts of planned utility growth and would establish an inventory of potential sites and transmission corridors. Utilities would be required to obtain certificates of site compatibility prior to construction of a facility. Prior to issuing a certificate, the Commission would be required to evaluate the environmental effects of construction of the facility.

The Council recommends a major revision of the State's planning and zoning statutes. Revision of the provisions relating to city planning and zoning authority is recommended. A major innovation is the extension of the zoning authority and subdivision control outside a city's corporate limits according to a schedule based upon the population of the city. Establishment of a comprehensive county planning procedure and the repeal of township zoning authority are recommended. The Council also recommends consolidation of the existing authority of counties and cities to enter into agreements for joint-planning.

To aid local planning, the Council recommends a bill to require the State Planning Division to review local plans and comment on the plans to identify possible conflicts with state law and with plans of adjacent areas. The Division would also be required to review and comment upon permit applications submitted to state agencies for activities which would have more than local significance or would be of state concern.

The Council recommends a bill to revise the municipal incorporation statutes to establish new requirements and procedures for incorporation of unorganized territory as a city. The territory could not exceed two square miles in area, would require at least 200 residents, and would have to provide basic urban services within a reasonable period of time after incorporation. The bill would also authorize the incorporation of a new city without requiring an election where at least two-thirds of the residents sign a petition for incorporation.

The Council reviewed state laws and state agency procedures in the area of environmental control and recommends a number of bills dealing with the prevention of environmental degradation.

The Council recommends numerous amendments to the State Air Pollution Control Act. These amendments would expand the powers and

duties of the Department of Health in accordance with the requirements of federal law and allow the operation of a modern permit system to control air pollution.

The solid waste legislation introduced in the Forty-third Legislative Assembly is recommended by the Council with several minor amendments. The bill provides for a solid waste facility permit system to be administered by the Department of Health.

The Council studied the citizen's right to be informed of adverse effects upon the environment and the role that citizens should play in combatting environmental degradation. In connection with this study, the Council recommends two bills: one providing for an environmental policy and requiring the writing of environmental impact statements on certain state projects; the other providing for citizen suits to enforce environmental laws.

After studying the current status of weather modification, both nationwide and within the State, the Council recommends that a State Weather Modification Board be established to administer a Statewide weather modification program. The recommended bill gives the board the authority to require and issue licenses and permits and to provide matching funds to county weather modification authorities.

The Council studied the action taken by the State Water Commission in attaching certain conditions to water appropriation permits and found that some of the conditions attached by the Commission overlapped the more direct authority of other State agencies. The Council recommends a bill ratifying the conditions attached to permits issued by the effective date of the bill but in the future allowing the Commission to attach only those conditions directly affecting the use and appropriation of water.

PERSONNEL CLASSIFICATION

The Council appointed five legislators to serve on the joint legislative executive steering committee which was created to assist the Central Personnel Division pilot project in the development of a model central personnel system for agencies of the State of North Dakota.

Public Administration Service or management services firm recommended to the Council a standardized classification and pay plan to eliminate inequities presently existing between salaries and wages paid from one department or agency to another. The firm also established classifications and salary ranges for state employees. At the writing of this report, no final action has been taken on proposed legislation to establish a Central Personnel Division and State Personnel Board.

RESOURCES DEVELOPMENT

The Council studied the Michigan Wisconsin application for a water permit and made recommendations to the State Water Commission as to what conditions should be attached to the water permit. It also recommended additional studies relating to large-scale resource development to several interim committees. The Council recommends specific legislation in the areas of coal leasing practices and surface owner rights and recommends an assessment

program to evaluate future growth potential relative to regional objectives and constraints.

The Council also recommends a bill to regulate some terms of a coal lease. The maximum term of years for which a coal lease may be valid would be set, a special acknowledgement would be required when a coal lease contains an advance royalty provision, and a percentage royalty provision would be required in coal leases. This bill would also provide a rescission period for either party after the lease has been executed. The Council also recommends a bill which would require the surface owner's consent before a permit to strip mine land could be issued by the Public Service Commission.

The Council recommends a bill which would provide for an appropriation for the establishment of a regional environmental assessment program within the Legislative Council. The assessment program would use economic, environmental, and societal information as a baseline to determine relationships among existing conditions, environmental and economic objectives, and the regional potential for development.

STATE AND FEDERAL GOVERNMENT

The Council reviewed establishment of a municipal bond bank, improvement of the state communications system, and requirements placed on the State by the Federal Environmental Pesticide Control Act of 1972.

The Council in the bond bank study, considered alternative methods of giving small political subdivisions access to the national money markets at reasonable costs. The Council recommends a bill which would establish a municipal bond bank within the Bank of North Dakota. The bond bank would have the authority to prepare and sell its own bond issues to provide funds to purchase the bonds of political subdivisions. These large bond issues would provide enough interest on the national money market to assist in obtaining lower interest rates while lowering the costs of marketing bond issues for political subdivisions.

As a result of the study of the state communications system, the Council recommends two appropriation bills which would fund the improvement of the law enforcement radio communications system and the law enforcement teletype communications system. In both bills, part of the money to be appropriated is for capital investment in equipment and part for leased circuits to operate the system.

The Federal Environmental Pesticide Control Act of 1972 provides for the establishment of a list of "restricted-use" pesticides by the Environmental Protection Agency. If the State does not have a system by which it can certify persons as qualified to handle these restricted-use pesticides, such pesticides will not be available for use within North Dakota. The Council recommends a bill which would provide for a system for the Commissioner of Agriculture to certify dealers, commercial applicators, and private applicators of restricted-use pesticides.

STATE EMPLOYEE SALARIES

The Council studied various alternatives for salary increases for state employees to give relief to employees whose salaries have lost substantial buying

power because of inflation and to establish salary plans that provide equal pay for equal work. The Council recommends a bill appropriating approximately \$6.3 million for salary increases for state employees for the six-month period beginning January 1, 1975. The salary increases are based on pay plans developed by the Central Personnel Division and the Board of Higher Education.

TRANSPORTATION

The Council studied the areas of motor vehicle inspection, highway safety legislation, the Uniform Vehicle Code, and the impact of large-scale resource development on transportation facilities. The Council found that motor vehicle inspection on an annual basis would increase highway safety and would bring North Dakota into compliance with Federal Highway Program Standard 4.4.1. The Council recommends a bill which provides for annual motor vehicle inspection administered by the Superintendent of the Highway Patrol.

In the area of highway safety, the Council recommends bills in the areas of motorcycle safety, alcohol safety, and tire safety. The motorcycle safety bill provides for the use of footrests on all motorcycles carrying passengers, prohibits the use of handlebars which are over 15 inches in height above the driver's seat, and adds the requirement of eye-protective devices for the operators of motorcycles not equipped with a windscreen. The alcohol safety bill provides for a minimum penalty for a first conviction for driving under the influence of alcohol and an increased minimum penalty, including a mandatory jail sentence, for a second conviction within 18 months of a previous conviction. The Council recommends a bill which would make it an offense for any person to drive or be in actual physical control of a vehicle if there is hundredths of one per cent or more by weight in alcohol in his blood. The Council also recommends a bill on tire safety which would require that vehicles operated on the highways must have tires with a tread depth of at least two thirty-seconds of an inch.

The Council recommends three bills which would put North Dakota's Rules of the Road into substantial compliance with the Uniform Vehicle Code's Rules of the Road. This would promote safety, especially where out-of-state tourists are heavily utilizing the highways of North Dakota.

The Council makes no recommendation relating to the impact of large-scale resource development on transportation facilities. However, the Council recommends a bill which would place fees generated from the sale of driver's licenses in the highway fund, rather than the General Fund. The Council also recommends that the Highway Commissioner be given authority to receive and expend funds for feeder roads and rural transportation assistance programs.

REPORT *of the* **NORTH DAKOTA LEGISLATIVE COUNCIL**

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



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1975

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North Dakota Legislative Council

STATE CAPITOL — BISMARCK 58501

TELEPHONE (701) 224-2916

January 7, 1975

The Honorable Arthur A. Link
Governor of North Dakota

Members, Forty-fourth Legislative Assembly
of North Dakota

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

Major recommendations include a revision of criminal statutes to bring such laws into conformance with Criminal Code designations for offenses; financial assistance to local law enforcement agencies; establishment of a prison industries fund; obscenity control; revision of the "point system" for drivers' licenses; creation of a Motor Vehicle Division in the State Highway Department from existing agencies; revision of the State's planning and zoning statutes; regulation of energy conversion and transmission facility sites; requiring environmental impact statements on certain state projects; enforcement of environmental laws through citizen suits; establishment of a statewide Weather Modification Board; compliance with federal air pollution laws; regulation of solid waste disposal; adoption of taxes relating to coal and energy development; regulation of coal leasing practices; surface owner protection; establishment of a regional environmental assessment program; ratification and limitation of conditions attached to water permits by the State Water Commission; authorization for the State to enter into agreements relating to taxation with Indian tribes; expansion of the veterinarian student program and establishment of agreements with out-of-state institutions for North Dakota students in dentistry and optometry; transfer of the Grafton State School and the San Haven State Hospital from the Director of Institutions to the Division of Mental Health and Retardation of the State Health Department; revision of certain constitutional provisions relating to education; financing construction projects at state colleges, universities, and junior colleges; a study of the feasibility of a State Department of Human Services; establishment of a municipal bond bank; provision for allowing agencies which operate from special funds to receive a portion of the interest from special funds under certain conditions; limited expansion of the coverage of workmen's compensation, changes in the benefit formula, and establishment of an advisory council; proposals relating to the Federal Equal Employment Opportunity Act; allowing state employees and firefighters to organize for purposes of collective bargaining; increasing the maximum interest rates on deposits; standardization of job classifications for state employees; salary increases for state employees; inspection of motor vehicles and adoption of highway safety amendments; and provision for a record roll call vote on any legislative floor action which may result in the final disposition of a bill.

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

Respectfully submitted,

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 recommendations include a revision of criminal statutes to bring such laws into conformance with Criminal Code designations for offenses; financial assistance to local law enforcement agencies; establishment of a prison industries fund; obscenity control; revision of the "point system" for drivers' licenses; creation of a Motor Vehicle Division in the State Highway Department from existing agencies; revision of the State's planning and zoning statutes; regulation of energy conversion and transmission facility sites; requiring environmental impact statements on certain state projects; enforcement of environmental laws through citizen suits; establishment of a statewide Weather Modification Board; compliance with federal air pollution laws; regulation of solid waste disposal; adoption of taxes relating to coal and energy development; regulation of coal leasing practices; surface owner protection; establishment of a regional environmental assessment program; ratification and limitation of conditions attached to water permits by the State Water Commission; authorization for the State to enter into agreements relating to taxation with Indian tribes; expansion of the veterinarian student program and establishment of agreements with out-of-state institutions for North Dakota students in dentistry and optometry; transfer of the Grafton State School and the San Haven State Hospital from the Director of Institutions to the Division of Mental Health and Retardation of the State Health Department; revision of certain constitutional provisions relating to education; financing construction projects at state colleges, universities, and junior colleges; a study of the feasibility of a State Department of Human Services; establishment of a municipal bond bank; provision for allowing agencies which operate from special funds to receive a portion of the interest from special funds under certain conditions; limited expansion of the coverage of workmen's compensation, changes in the benefit formula, and establishment of an advisory council; proposals relating to the Federal Equal Employment Opportunity Act; allowing state employees and firefighters to organize for purposes of collective bargaining; increasing the maximum interest rates on deposits; standardization of job classifications for state employees; salary increases for state employees; inspection of motor vehicles and adoption of highway safety amendments; and provision for a record roll call vote on any legislative floor action which may result in the final disposition of a bill.

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.

The Council also has on its staff the Legislative Budget Analyst and Auditor and his assistants who provide technical assistance to the committee of the Council in addition to reviewing audit reports for the Legislative Audit and Fiscal Review Committee.

In addition, during the interim the Legislative Council staff provides stenographic and bookkeeping services to 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 committee 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 firms and individuals included Eide, Helmeke, Boelz & Pasch, Certified Public Accountants; Stanley Hall, Certified Public Accountant; Peat, Marwick, Mitchell & Co.; Experience, Inc.; Booz, Allen & Hamilton; Battelle-Columbus Laboratories; and Arthur Andersen & Co. In all other instances, the Council's interim studies were handled by the committee 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 LEGISLATIVE COUNCIL

Special Report on Study of State Employee Salaries

On May 16, 1974, the Chairman of the Legislative Council called a special meeting of the Council to consider the subject of state employee salaries.

The Chairman, in accordance with a Council motion, had designated the Legislative Council to act as a Special Committee to conduct personnel and pay plan studies for the purpose of providing information upon employee compensation problems and for the purpose of preparing legislation to increase state employees' salaries on January 1, 1975. Members of the Committee were Representatives Bryce Streibel, Chairman, Richard Backes, A.G. Bunker, Charles Mertens, Edward Metzger, Oscar Solberg, Earl Strinden, and Ralph Winge; and Senators C. Morris Anderson, L.D. Christensen, Walter Erdman, S.F. Hoffner, C. Warner Litten, Robert Melland, and Robert Nasset.

The meeting was called because of the many reports to legislative committees indicating the seriousness of state employee compensation problems and the many requests to the Emergency Commission for grants and line item transfers for immediate increases to employees' salaries. At this special meeting of the Legislative Council, the North Dakota State Employees Association urged the Council to take whatever action possible to give salary relief to state employees. The North Dakota AFL-CIO's recommendation for the preparation of an emergency measure to increase salaries to be introduced at the opening of the Forty-fourth Legislative Session was also presented to the Council. In addition, the Chairman of the Higher Education Salary Committee apprised the Committee of the need for substantial salary adjustments for Higher Education faculty members by pointing out that from January 1, 1973, to June 30, 1975, the rate of inflation would exceed salary increases during that period by 12 percent. The Council concluded the meeting by directing the staff of the Legislative Council in cooperation with the Central Personnel Division and the Office of the Executive Budget to compile data which would be used as a basis for appropriation bills to fund a \$50 per month per employee retroactive pay increase from July 1, 1974, to December 31, 1974, and alternatives for pay plans to become effective for the pay period beginning on January 1, 1975.

RETROACTIVE PAY

In response to a request by the Chairman of the Legislative Council for an opinion regarding the constitutionality of an emergency bill providing for

retroactive salary increases, the Attorney General stated that from the examination of various legal approaches to the question, they were unable to provide a firm opinion. If the bill were challenged, the matter would ultimately be resolved by the Court's interpretation of the provisions of Section 185 of the North Dakota Constitution which prohibits the State from giving its credit or making donations to or in aid of any individual, association, or corporation, except for the reasonable support of the poor. The committee failed to take action on this bill.

CENTRAL PERSONNEL DIVISION

The Chairman of the Legislative Council called a second special meeting of the Committee on October 14, 1974, to hear the alternative studies for salary increases to state employees prepared by the Council staff, Central Personnel Division, and the office of the State Board of Higher Education. From the various alternatives presented to the Council for salary increases based upon the classification and salary plan prepared by the Central Personnel Division, the Council recommends an appropriation of approximately \$3 million for salary increases to employees in the agencies involved in the Central Personnel Division pilot project for the six-month period beginning January 1, 1975. The increases will be based on a formula requiring that employees be paid at levels equivalent to the minimum of the pay range for their classification or at some point within the pay range as determined by the agency or institution director.

The Director of the Central Personnel Division stated that its classification and salary plan covered approximately 4,700 employees. Consequently, except for 800 employees, all state employees would either be covered under the plan developed by the department or under the plan proposed by the Board of Higher Education. The salary ranges established by the Personnel Division are on the basis of 250 questionnaires returned by private sector companies and governmental units in the 10 surrounding states. The steps to which employees are assigned within grades will be up to the discretion of the department administrator.

The Director of the Central Personnel Division also filed a report with the Committee regarding the state employee fringe benefit program and compared it to fringe benefits offered by private industry. Vacation, sick leave, and holiday policies compare favorably with private industry practices. Insurance benefits offered by the State are uniform and

generally compare favorably with private industry; however, in some areas, such as life insurance, state departmental benefits are not uniform and do not compare favorably with private industry. Regarding retirement benefits, the report indicated that most employers in private industry pay the entire cost of retirement plans, whereas most state agencies match the employees' contribution to a maximum of \$500 annually with \$125 of this \$500 designated as funding for the administration of the plan.

HIGHER EDUCATION SALARIES

Of two alternative plans for emergency salary legislation presented by the State Board of Higher Education, the Committee recommends a \$3.3 million proposal to fund an 11.9 percent increase for faculty members and a sufficient increase to bring all classified employees at the institutions of higher education to the midpoint of their grade.

The Fiscal Officer for the State Board of Higher Education office stated that the Higher Education

1975-77 budget requests filed with the Executive Office of the Budget are sufficient to continue funding the levels included in the recommendation. He further stated that the 11.9 percent increase was based upon the request of the Special Salary Committee to the State Board of Higher Education. Funds are included in the proposal for auxiliary enterprises since student room and board rates cannot be increased sufficiently during the interim to cover the cost of funding the plan as proposed. The employees covered in the plan are full-time employees and students to the extent they are paid from state funds. The classified employee recommendations were arrived at by increasing the Ernst & Ernst recommendations of January 1973 by the amount of inflation experienced since the date of the Ernst & Ernst study. The base pay on the Board of Higher Education pay schedule has been increased from a minimum of \$350 per month to a minimum of \$400 per month, and, increases for some classified employees range from a low of 8.8 percent at Minot State College to a high of 24 per cent at the University of North Dakota.

ANALYSIS OF RECOMMENDATION

The Committee recommends a bill containing an emergency clause for consideration and submission to the Forty-fourth Legislative Assembly appropriating the following amounts to implement the proposals submitted by the Central Personnel Division and the Board of Higher Education:

Institutions of Higher Education	\$3.300 million
Departments covered by the Central Personnel Division study	\$2.900 million
Other agencies not covered by a classification and salary plan	\$.660 million
	<hr/>
Total Cost	\$6.860 million
Less: Funds available from 1973-75 appropriation and other sources	\$.600 million
	<hr/>
Total additional appropriation required	\$6.260 million
Less: Additional federal and other special funds to be appropriated	\$1.585 million
	<hr/>
Total General Fund Appropriation Required	<u>\$4.675 million</u>

Presented in Exhibit "A" is a comparison of January 1, 1975, salary ranges for 20 positions as provided for in the Central Personnel Division's plan and the Board of Higher Education's plan. For these 20 positions, the midpoint average on January 1, 1975, of the Central Personnel Division's plan is 2.13 percent below the midpoint average for the Board of Higher Education's plan.

EXHIBIT "A"

COMPARISON OF JANUARY 1, 1975, SALARY RANGES FOR 20 POSITIONS UNDER THE CENTRAL PERSONNEL DIVISION AND BOARD OF HIGHER EDUCATION SALARY PLANS

	Central Personnel Division			Higher Education		
	Minimum	Midpoint	Maximum	Minimum	Midpoint	Maximum
Clerk III	\$ 491	\$ 575	\$ 658	\$ 472	\$ 552	\$ 633
Programmer III	926	1,084	1,241	808	946	1,083
Account Technician II	658	770	882	665	778	891
Accountant III	1,072	1,254	1,436	1,031	1,207	1,382
Chemist I	800	936	1,072	848	993	1,137
Social Worker I	726	849	972	935	1,094	1,253
Psychologist III	1,241	1,452	1,662	1,253	1,467	1,681
Custodian I	425	497	569	450	526	603
Food Service Worker II	446	522	597	429	502	574
Grounds Worker I	516	604	691	546	639	732
Power Plant Operator I	597	699	800	603	706	808
Personnel Officer I	800	936	1,072	808	946	1,083
Nurse I	658	770	882	732	857	982
Lab Technician II	516	604	691	664	777	891
Dietitian I	800	936	1,072	891	1,043	1,194
Public Information Specialist IV	1,182	1,383	1,583	1,083	1,268	1,452
Library Technician	569	666	762	574	671	769
Plant Services Director II	1,126	1,317	1,508	1,137	1,330	1,524
Attorney I	1,182	1,383	1,583	1,194	1,397	1,600
Cook II	542	634	726	472	553	633
Total	\$15,273	\$17,871	\$20,459	\$15,595	\$18,252	\$20,905
Average Midpoint 1/		<u><u>\$ 894</u></u>			<u><u>\$ 912</u></u>	

1/ The consulting firm (Public Administration Service) that developed the salary and classification plan for the Central Personnel Division has recommended a 10 percent increase in the pay ranges on July 1, 1975. The Board of Higher Education is proposing an eight percent increase in its pay plan ranges on July 1, 1975. If these recommendations were funded, the average midpoint for these 20 positions on July 1, 1975, would be approximately the same.

OTHER ALTERNATIVES AND STUDIES

The staff of the Legislative Council also presented a report containing information regarding other possible alternatives for salary increases for approximately 11,500 full-time equivalent employees for the period beginning January 1, 1975, and ending June 30, 1975. It was reported that a five percent or minimum \$50 salary increase for all state employees would require an additional appropriation over current budgets of \$3.7 million with \$3.4 million of this appropriation required from the State General Fund and \$300,000 from federal and other special funds. The \$3.7 million appropriation would include \$1.9 million for the institutions of higher education, \$600,000 for charitable and penal institutions, and \$1.2 million for all other state agencies.

It was further reported that the cost of a nine percent or minimum \$50 per month salary increase would require an appropriation of \$4.9 million with \$4.5 million of this appropriation required from the State General Fund and \$400,000 available from federal and other special funds. Included in this appropriation would be \$2.5 million for the institutions of higher education, \$700,000 for charitable and penal institutions, and \$1.7 million for all other state agencies.

The report also presented data on salary increases granted to state employees on July 1, 1973, and July 1, 1974. Presented below is a summary of the number of departments, agencies, and institutions granting various percentage increases to employees paid at various salary levels:

Summary of Number of Departments, Agencies, and Institutions Granting Salary Increases

Range of Increase	July 1, 1973			July 1, 1974		
	Under \$500 Per Month	\$500-\$1,000 Per Month	Over \$1,000 Per Month	Under \$500 Per Month	\$500-\$1,000 Per Month	Over \$1,000 Per Month
0 - 5%	34	50	48	22	29	46
5.1 - 10%	48	47	34	36	57	45
Over 10%	5	4	9	33	18	12

CONCLUSION

The recommendation of pay plans by the Legislative Council to become effective for the pay period beginning on January 1, 1975, are designed to serve two purposes. They are designed to give immediate relief to employees whose salaries have lost

substantial buying power because of inflation; and they are designed so that employees will be paid based upon a professional classification of positions that should bring the State closer to an ideal compensation system where employees receive equal pay for equal work.

BUDGET SECTION

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. In addition, the Budget Section has been assigned other duties by law which are set forth in later sections of this report.

Members of the Budget Section of the Legislative Council appointed to the Committee for the interim work were: Representatives Robert F. Reimers, Chairman, Paul Bridston, Ralph Christensen, Charles Fleming, Layton Freborg, Robert Hartl, LeRoy Hausauer, Clark Jenkins, Howard Johnson, Harley Kingsbury, Lawrence Marsden, Charles Mertens, Ernest Miedema, Jack Olin, Olaf Opedahl, James Peterson, Oscar Solberg, Enoch Thorsgard, Malcolm Tweten, Vernon Wagner; and Senators Evan Lips. Vice Chairman. Walter Erdman, Lester Larson, George Longmire, Robert Melland, Lawrence Naaden, Jack Page, Ernest Pyle, Clarence Schultz, Theron Strinden, Russell Thane, Frank Wenstrom, and Lt. Governor Wayne Sanstead. At the organizational meeting of the Budget Section, which was held on Friday, May 18, 1973, 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. Hear reports from the State Social Service Board regarding progress made by the Department in its design and implementation of an improved system for reimbursing medical services vendors on a basis more related to the level of care and treatment provided eligible recipients.
3. Act upon requests from North Dakota State University to spend Experiment Station local moneys which are 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 and reports on the costs of services provided by agencies which license, inspect, or regulate private business activities or products.
5. Receive reports from the State Hospital regarding its efforts to receive an emergency

generator from the excess property program of the North Dakota Office of Civil Defense.

6. Hear reports from the Director of the Office of Central Data Processing regarding data processing projects which his office has refused to undertake since the applications cannot be justified because of high costs or the availability of less expensive or more efficient alternatives to achieve the same desired results.
7. Hear reports from the Director of Institutions' office regarding anticipated program changes, future space needs of institutions and departments under his control, and a plan including cost estimates, on the maintenance, remodeling, and facility construction necessary to meet future space needs at the institutions under his control and also a survey of the utilization of the space within the State Capitol and the State Office Building to determine future space needs and whether existing space is efficiently utilized.
8. Hear reports from the Executive Office of the Budget and provide consultation to that office in regard to the development of a program budget system.
9. Hear reports from the Executive Office of the Budget regarding irregularities it has discovered during the pre-audit of claims which point to the need for improved fiscal practices.
10. Authority to approve Board of Higher Education recommendations regarding the amount charged nonresident students for tuition at the State's colleges and universities.
11. 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 seeking authority to sell any real property which an institution of higher learning has received by gift or bequest.

The report of the Budget Section was submitted to the Legislative Council at the biennial meeting of the Council held at Bismarck. The report and recommended legislation were adopted for submission to the Forty-fourth Legislative Assembly by the Legislative Council in November 1974.

SOCIAL SERVICE BOARD

Section 5 of Senate Bill No. 2012 of the Forty-third Legislative Assembly appropriates to the State Social Service Board a sum of \$1 million in federal funds and \$400,000 to be contributed by individuals, organizations, governmental units, or other sources, or such lesser amounts as may be necessary, for purposes determined to be eligible for

funding as provided by state and federal law during the biennium beginning July 1, 1973, and ending June 30, 1975. Section 5 further provides that expenditures pursuant to this appropriation shall be made only for funding such functions or activities that have first been approved by the Legislative Council Committee on Budget.

Projects approved by the Budget Section during the current interim are as follows:

Description	Federal	Local	Total
Social Services in Schools	\$ 75,000	\$ 27,740	\$102,740
Richard Oppen Trust	66,000	24,411	90,411
Bismarck Awareness House	32,000	11,836	43,836
Volunteer Agencies	75,000	27,740	102,740
Dickinson Hostel	15,000	5,000	20,000
Social Group Services	37,500	12,500	50,000
The Depot	42,000	14,000	56,000
Heart of America	36,750	12,250	49,000
Minot Workshop	20,250	6,750	27,000
Community Teaching Unit	8,250	2,750	11,000
Family Planning	17,250	5,750	23,000
Alcoholism and Drug Center	18,750	6,250	25,000
Total	\$443,750	\$156,977	\$600,727

The school social services referred to include assistance to school districts in special education and counseling programs. Included under volunteer agencies are projects under the supervision of Children's Village, Lutheran Social Services, and Catholic Family Services. The Richard Oppen Trust is a project in the Minot area providing a comprehensive program for unwed mothers. The Dickinson Hostel is an agreement to establish a group living arrangement for retarded men between the Grafton State School and the Badlands Human Service Center. It will provide independent living from which the man can obtain training and employment possibilities in the Dickinson area. Social group services refers to the establishment of a community recreational and social activities program for clients of the Minot Vocational Adjustment Workshop. The Depot referred to is a community youth program where young persons with problems can go for recreational, cultural, and social functions in the City of Fargo. The Heart of America Center will have a full-time person on its staff in Rugby under the above proposal who will be able to provide services including marriage and family services, adolescent and youth services, and educational services to the counties served by the Heart of America Center. The Minot Vocational Adjustment Workshop will use the funds available to it under the above-mentioned requests for the development of an onsite professional social service department. The Minot Vocational Adjustment Workshop is the

center of the Grafton State School de-institutionalization program in that region. The community services teaching and training unit project provides funds for area social service center staff to arrange for and place students pursuing careers in social service-related fields in working situations to complement their studies at the university or college they are attending. The family planning project will make funds available for specialized medical social work services when requested by medical practitioners, and the alcoholism and drug center project is under the Council on Alcoholism and Drug Problems in Grand Forks, which will provide the general public with information, referral education services, as well as provide counseling to chemically dependent individuals and their families.

At the January 9, 1974, meeting of the Budget Section, the Social Service Board asked for Committee approval to spend the \$141,300 included in the State Social Service Board appropriation for the Grafton State School to employ five persons. Four of them would be stationed at area social service centers in Bismarck, Grand Forks, and Minot, and the fifth, the project coordinator, would be stationed at the Grafton State School to assist in the de-institutionalization program at the Grafton State School. The program is intended to strengthen the de-institutionalization process and to enhance local community resources to provide services to

mentally retarded children. Working cooperatively with the existing agencies, it was reported that these professionals would assist in the location, selection, training, and supervision of foster parents who would provide care for children placed from the Grafton State School. The Social Service Board asked for Budget Section support in the expenditure of funds in this manner since at the time the appropriation bill was passed by the Legislature, it was intended that such federal funds would be used for staff positions at the Grafton State School; however, because of restrictions contained in federal rules and regulations, the expenditure of funds on the Grafton State School campus was not possible and thus this alternative is recommended. The Budget Section by motion approved the mental retardation project proposal as submitted by the Department of Social Services.

In response to the requirement for Social Service Board reports on improvements in the reimbursement system for medical vendors, the following is the status of the Board's work regarding long-term care facilities on October 31, 1974:

1. Ceilings or maximum dollar amounts on per diem rates have been removed.
2. A study was conducted jointly by the department and facilities to determine an equitable allocation of cost among the various levels of care provided by the facilities.
3. Title XVIII (Medicare) regulations concerning reimbursement have been applied when appropriate in determining rates for Title XIX facilities to protect against exceeding the maximum amounts allowable for claiming federal financial participation, i.e., the upper limits of what a facility can be reimbursed under Title XVIII cannot be exceeded under Title XIX.
4. In relation to activity with the committee of nursing home administrators, the following items are under consideration:
 - a. Determining an appropriate chart of accounts together with a comprehensive description of items to be included in each of the classifications.
 - b. Consideration is being given to establishing maximums on certain of the expense categories. Our study of the methods being employed by other states in the surrounding area indicates this to be a common practice.
 - c. Consideration is being given to utilizing prospective rate together with a year-end cost settlement to provide the facility with full reimbursement of all allowable costs.

- d. In relation to preceding items, a method of providing for a "good management", "cost reduction", or other incentive is contemplated, the purpose being to encourage homes to keep costs to a minimum by rewarding those who accomplish this goal.

EXPERIMENT STATION

Senate Bill No. 2002 of the Forty-third Legislative Assembly, in addition to appropriating funds for the operation of the North Dakota State University Cooperative Extension Service and the Experiment Stations during the 1973-75 biennium, provides that any additional income from local sources, which shall include receipts from sales of grain, personal services, dairy products, livestock, and other agricultural products may be expended in excess of that specifically appropriated through biennial appropriation bills only in the event that authorization has first been received from the Committee on Budget of the Legislative Council. At the March 20, 1974, meeting of the Budget Section, North Dakota State University requested approval from the Committee to spend \$440,860 of income in addition to that appropriated by the Legislative Assembly during the last Legislative Session. It was reported that the primary reasons for this interim request for additional authorization are as follows:

1. The costs of many supply items which must be purchased to maintain the current program of the Agricultural Experiment Station have significantly increased above budget estimates since the time the budget proposals were developed in the spring of 1972 and the subsequent appropriations made by the 1973 Legislative Session.
2. The cost of maintaining personnel has significantly increased beyond the amounts anticipated in the budget requests for the current biennium. These increases are in fringe benefits for all payroll personnel and in wages and fringe benefits for hourly (temporary) help. Additionally, the financial effect of observing a 40-hour week with necessity for payment of overtime for non-professional personnel will exceed current capacity to meet these requirements.
3. The costs of the services which must be provided for these locations to maintain the program, including utilities, transportation, communications, etc., have increased to the extent that they will exceed the current authorization for expenditures without any abnormal or expanded operations.
4. Most importantly, the income to date from sales of goods and services has increased

beyond the original estimates. This income is expected to provide additional funds to cover the proposed increase in authorization.

By motion, the Budget Section authorized the Experiment Stations to spend \$395,341 from local income at the Main Experiment Station, Branch Stations, and Agronomy Seed Farms during the 1973-75 biennium.

STATE AUDITOR'S OFFICE

In accordance with law, the State Auditor's office assembled a report regarding the fees collected by 16 different state agencies which license, inspect, or regulate private business activities or products. The report indicates the collections for each type of service provided and the estimated cost of providing the service. Copies of the report were made available to each member of the Budget Section. The Auditor's office also provided information regarding the operation of facilities constructed pursuant to the Revenue Bond Act. Statements relating to these activities were included in audit reports of agencies which have constructed facilities under the Revenue Bond Act.

STATE HOSPITAL

In accordance with Section 6 of the 1973-75 appropriation to the State Hospital requiring that \$75,000 appropriated for an emergency generator be

disbursed only after the State Hospital has made proper application for an emergency generator under the excess property program of the North Dakota Office of the Civil Defense, the State Hospital filed with the Legislative Council office copies of its request to the North Dakota Office of Civil Defense for the generator, the reply from the office which indicated the lack of availability of such generator, and the authorization from the Office of the Executive Budget for the disbursement of funds for the generator. Section 6 provides that copies of the correspondence shall be filed with the Legislative Council Committee on Budget before expenditures are made pursuant to the appropriation. The correspondence was received in the Legislative Council office on October 28, 1974. The Department of Accounts and Purchases let bids for the project on June 28, 1973, and delivery date is expected late in 1975.

DIRECTOR OF INSTITUTIONS

In accordance with Senate Concurrent Resolution No. 4026 of the 1973 Legislative Assembly, the Director of Institutions made a report at the October 16, 1974, meeting of the Committee which included a priority list of new construction and remodeling for those institutions and departments under his office's control. The Budget Section encouraged the Director of Institutions to use his own staff for the project rather than employ consultants. The following is a listing of the projects in priority order:

Category A: Grafton State School—Professional Service Building	\$1,185,120
Deaf School—Demolish Main and Build Tunnel	120,000
Blind School—Multipurpose Building	250,000
Category B: State Penitentiary—Vocational Education Building	75,000
Grafton State School—Pool Enclosure	85,000
Deaf School—Library Classroom Addition	320,000
Grafton State School—Tunnel from Wylie to Laundry	75,000
Industrial School—Assembly-Theatre Complex	92,000
Category C: Director of Institutions—Remodel Crime Bureau Building	210,000
Industrial School—Vocational-Maintenance Complex	450,000
Library—Library Building	1,560,000
Category D: Industrial School—All-Purpose Recreation Court	12,000
Deaf School—Activity Center	547,000
Industrial School—Visiting Center	80,000
Total	<u>\$5,061,120</u>

The Director of Institutions presented the space utilization study of the State Capitol and the State Office Building. In his opinion, the estimated space needs for agencies in the State Capitol are as follows:

- A. 44,795 additional square feet required to maintain present functions.
- B. 18,410 additional square feet required for planned future expansion.
- C. 20,310 additional square feet will be required to bring "split" departments back to the Capitol from their locally leased facilities.
- D. Total estimated additional space required for the State Capitol is 83,515 square feet.

The Director of Institutions also pointed out that the estimated additional space required for the State Office Building is 3,440 square feet. He further reported that at the present time the State of North Dakota is leasing 66,071 square feet of office space in the Bismarck area at an annual cost of \$166,788, of which \$65,000 is state funds, \$57,060 is federal funds, and \$44,328 consists of other special funds. The Director of Institutions said that based upon these figures and other study findings, it is time to consider constructing a new office building.

Other possibilities suggested by the Director of Institutions regarding the State Capitol are as follows:

1. Have Motor Vehicle Department remove stored material still in Capitol basement vault used by Social Service, thereby releasing space for Social Service storage and/or State Printer expansion.
2. Release 108 square feet from Auditor to Securities Commission on 3rd floor.
3. Remodel Land Department.
4. Expand State Printer into Social Service storage area.
5. Eventually release Surplus Property office to Higher Education on 10th floor.
6. Possibly get space from Economic Opportunity in future for Soil Conservation expansion.
7. In future have departments funded by federal grants occupy leased space outside Capitol complex.
8. Utilize more leased space. However, the more prominent usage of leased space raises the difficulty of speedy inter-departmental communication.

9. Move Health Department and Social Service into leased space. Social Service has the greatest projected need (low office space/employee), and would need the most space to have entire department in one location.
10. Build a new State Office Building.
11. Study possibility of having some department, such as Workmen's Compensation or Land, construct a building and lease to other departments.

PROGRAM BUDGETING

At the January 9, 1974, meeting of the Committee, the Executive Budget Analyst reported that the Department of Accounts and Purchases had contracted with Arthur Andersen & Co. to review the present accounting system to define areas where change is necessary. The accounting system would be redesigned so that it could accommodate program budgeting as directed by the Legislature. Budget Committee "B", Senator Robert Melland, Chairman, at its July 30, 1974, meeting on behalf of the Budget Section, heard the final report regarding the proposed changes to the State's accounting and budget system and encouraged the Department of Accounts and Purchases to proceed as recommended in the report. Please refer to Budget Committee "B"'s report for further information regarding the recommended accounting and budget system.

NONRESIDENT TUITION

Section 15-10-18 of the North Dakota Century Code provides that the State Board of Higher Education, with the approval of the Committee on Budget of the Legislative Council, shall determine the amount of tuition to be charged nonresident students at the institutions of higher education under the control of the Board.

At the January 9, 1974, meeting, the Budget Section by motion moved that a Subcommittee of the Budget Section be appointed to meet with the Board of Higher Education regarding reciprocal agreements between states for acceptance of nonresident students at in-state tuition rates at the State's colleges and universities, and that Representative Kingsbury, Representative Miedema, Senator Strinden and Senator Pyle be appointed to the Subcommittee. The Subcommittee served in an advisory capacity to the Board of Higher Education at meetings it held to discuss the possibility of reciprocal agreements between North Dakota and Minnesota. At the March 20, 1974, meeting of the Budget Section, the Board of Higher Education was given authorization to proceed with an out-of-state tuition pilot project authorizing the State's colleges to reduce out-of-state tuition to an

amount equal to that charged in-state students. Under the proposed plan, each of the state's institutions would suffer a loss of estimated income of from \$10,000 to \$15,000, amounting to about \$60,000 for all State colleges in the event the plan does not encourage additional out-of-state students to attend the institution selected for the pilot project. The present annual amount of tuition charged nonresident students at the Universities is \$1,082 compared to \$354 which is charged resident students. At the State's colleges, the tuition charged nonresidents is \$852 and the tuition charged residents is \$315. The Board, however, did not proceed with this plan, since it did not appear that the State colleges could absorb the potential loss of income.

At the October 16, 1974, meeting, the Board of Higher Education was authorized by the Budget Section to proceed to negotiate a tentative reciprocal agreement regarding nonresident tuition, subject to legislative approval, with the States of Minnesota, South Dakota, and Montana. It was reported to the Budget Section that 1,626 Minnesota students are enrolled in North Dakota colleges and universities while 826 North Dakota students are enrolled in institutions of higher education financed by the State of Minnesota. It was reported that should the nonresident tuition differential be eliminated, the loss of income per year for the State's colleges and universities could approach \$1.9 million. If the agreement were limited to the State of Minnesota, the loss could approach \$1.3 million per year. Should enrollments increase as a result of discontinuing the nonresident tuition differential, then the loss of income would be reduced accordingly. The Budget Section was advised that during the negotiation process, a proposal would be considered whereby a per-student charge agreeable to both states would be discussed. Under this system, the state educating the greater number of nonresident students would receive an agreed-upon per-student payment as a reimbursement for educational services provided.

NO REPORTS FILED

The Budget Section received no reports from the Executive Budget Office during the interim regarding irregularities discovered during the pre-audit of vouchers of the various state departments which are submitted to the Department of Accounts and Purchases for payment, nor did it receive reports from the Office of Central Data Processing reporting instances where it had received requests to do projects which could not be justified because of high costs or the availability of less expensive or more efficient alternatives to achieve the same desired results. The Budget Section received no 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 gifts or authority to sell any real property which an institution had received as a gift or a bequest.

LEGISLATIVE INTENT

At the October 16, 1974, Budget Section meeting, Budget Section members expressed concern about state agency institution and departmental lack of compliance with legislative intent. By motion it moved that the following information regarding the Game and Fish Department, State Water and Conservation Commission, and the Governor's Council on Human Resources' action, where compliance with legislative intent has been questioned, be included in the Budget Section Report.

In the opinion of some Budget Section members, the July 19, 1973, State Game and Fish Department purchase of 5,611 acres of land in the Killdeer Mountain area from Mr. H.L. Roquette and sons at a cost of \$322,632 from the 1973-75 appropriation is contrary to legislative intent since the line item in the department's appropriations bill requesting funds for the purchase was deleted by the House Appropriations Committee. The 1973 Journal of the House of Representatives, pages 363 and 400, states, "The amendment to the Game and Fish Department budget is to . . . not fund the Killdeer Mountain land purchase."

In a letter dated September 19, 1973, addressed to the Legislative Council staff, the State Game and Fish Department Commissioner stated that in July 1973 the department exercised an option to purchase 5,611 acres in the Killdeer Mountains at a cost of \$322,632. It was further stated that the land was acquired using Pittman-Robinson money (75 percent federal and 25 percent state), and that the total acquisition amounted to 6,571 acres at \$57.50 per acre for a total cost of \$377,832.50, with 960 acres at a cost of \$55,200 having been purchased in March of 1972. In the letter, the department maintains that it had authority to purchase the land pursuant to the 1973-75 biennial appropriation which contained a line item for land, dams, and major improvements.

In its budget request for the 1973-74 biennium, the State Game and Fish Department had requested, as a separate line item, \$330,000 to exercise the option to purchase the remaining 5,611 acres. In the department's narrative justification as presented in its budget request submitted to the Executive Budget office, it is stated that the project was approved by Governor William L. Guy, and that \$330,000 would be needed for acquisition of the remaining 5,611 acres of the option. The department also requested \$650,000 for other projects under the line item of land, dams and major improvements. The narrative justification of this budget item

states: "Acquisition of state school lands having recreation potential will receive priority in our acquisition program. We will also acquire as much Turtle Mountain and Pembina Hills woodlands as possible. Wetlands and additions to present game management areas will also receive priority."

The Senate Appropriations Committee minutes of February 19, 1973, regarding House Bill No. 1014, noted that a representative of the State Game and Fish Department appearing before the Committee stated, "The House took out the Killdeer Mountain land acquisition." The Senate, by approving the State Game and Fish Department budget without reference to this project, in effect concurred with the House Appropriations Committee's deletion of the separate line item for the Killdeer Mountain land purchase.

The question of compliance with legislative intent also relates to the State Water Commission's expenditure of funds from a \$60,000 appropriation for the Souris-Red-Rainy River Basins Commission included in House Bill No. 1015. The House of Representatives deleted the \$60,000 from House Bill No. 1015 for the Souris-Red-Rainy River Basins Commission (House Journal 652). However, the Senate reinstated the appropriation (Senate Journal 915), stating, "It is the intent to allow \$60,000 for state participation in the Souris-Red-Rainy Project if federal funds continue for the program, but the funds shall not be expended if federal funds are not available."

A State Water Commission resolution was presented to the Senate Appropriations Committee on February 22, 1973, stating:

"...WHEREAS, should the Souris-Red-Rainy River Basins Commission cease operations on or before July 1, 1973, the \$60,000 shall remain in the State's general fund. NOW, THEREFORE, BE IT RESOLVED by the North Dakota State Water Commission this 21st day of February 1973 that it respectfully urges the Senate Appropriations Committee to . . . restore the \$60,000 to the Souris-Red-Rainy River Basins Commission with the provisions that, should the Commission not be in existence on July 1, 1973, the entire amount shall remain in the general fund, and should the Commission cease operations any time between July 1, 1973, and June 30, 1975, a pro-rated percentage of such amount shall revert to the general fund."

The Souris-Red-Rainy River Basins Commission terminated on June 30, 1973, by operation of Section 7 of the President's Executive Order No. 11359 of June 20, 1967, as amended, and was incorporated

with the existing Upper Mississippi River Basins Commission pursuant to Executive Order No. 11659, dated March 22, 1972, as amended by Executive Order No. 11737, dated September 7, 1973. In an effort to continue the work of the Souris-Red-Rainy River Basins Commission, the Governor in a letter to the Attorney General dated September 18, 1973, stated, "Although the Souris-Red-Rainy River Basins Commission has been terminated, the 'Souris-Red-Rainy Project' has not been terminated." The Governor then asked, "Is continued funding of the Souris-Red-Rainy Project under the Upper Mississippi River Basins Commission sufficient precedent to authorize the expending of any or all of the \$60,000 appropriation for Souris-Red-Rainy Project purposes?"

In a letter to the Governor dated October 9, 1973, the Attorney General responded:

"The appropriation made by the 1973 Legislature was for the Souris-Red-Rainy 'Project' rather than for the Souris-Red-Rainy 'Commission'. Had the appropriation been for the Commission, it could not have been expended since the Commission has been terminated. However, Executive Order No. 11737 signed by the President on September 7, 1973, did include within the Upper Mississippi River Basin Commission those portions of the States of Minnesota and North Dakota that are drained by the Souris-Red-Rainy Rivers System. The Order further provided for one member from the State of North Dakota, among other states, to serve on the Upper Mississippi River Basin Commission. The Order further provided that all funds, property, records, employees, assets, and obligations of the Souris-Red-Rainy River Basins Commission are, with the concurrence of the Governors of the affected States, transferred to the Upper Mississippi River Basin Commission, effective as of July 1, 1973. The Governors had concurred in such transfer on June 6, 1973. Such action is authorized by virtue of Section 61-02-24 of the North Dakota Century Code, as amended.

"It is therefore our opinion that the Souris-Red-Rainy Project still exists within the framework of the Upper Mississippi River Basin Commission and that continued federal funding of the Souris-Red-Rainy Project under such Commission is sufficient condition precedent to authorize the expending of any or all of the \$60,000 appropriation for such purpose as contained in Chapter 15 of the 1973 Session Laws of North Dakota."

The inclusion of the Commission on the Status of Women within the Governor's Council on Human Resources has also been viewed by some members of

the Budget Section as not being in compliance with legislative intent.

The Governor's Council on Human Resources was created in 1965 by Section 50-26-01 of the North Dakota Century Code. The Council consists of a Committee on Aging, a Committee on Children and Youth, a Committee on the Employment of the Handicapped, and such other committees which have a related interest in human resources. In July 1972, Governor William L. Guy appointed a Commission on the Status of Women to the Governor's Council on Human Resources pursuant to the authority provided for in Section 50-26-01, which includes the following language authorizing the establishment of additional committees: "such other committees that have a related interest in human resources."

At the beginning of the 1973-75 biennium, the Executive Committee of the Council allocated to the Commission a portion of the Council's appropriation for fees and services, and supplies and materials. At present, the Commission on the Status of Women is associated with the Governor's Council on Human Resources employing the use of the Council's staff, services, and equipment. The question raised is whether the 1973 Legislative Assembly intended to fund the Commission on the Status of Women within the Council.

During the Forty-third Legislative Assembly, Senate Bill No. 2216, which would have removed the Commission on the Status of Women from the Governor's Council, failed; however, the Senate Appropriations Committee deleted from the Council's budget request the only funds identifiable with the Commission on the Status of Women, which was \$2,000 in fees and services. The 1973 Journal of the Senate, page 91, regarding Senate Bill No. 2003, provides the following statement of legislative intent: "The purpose of the amendment is to eliminate the \$2,000 in the fees and services item which was allowed for the Commission on the Status of Women."

Before further analysis of the actions referred to in this memorandum, a review of the meaning of the term "legislative intent" will be helpful. In the North Dakota Legislative Assembly, legislative intent other than that specifically stated in the various measures that have been enacted into law can be found in but not limited to one or more of the following: A legislative resolution, a statement of purpose of amendment in either the House or Senate Journal, the departmental budget request, the committee minutes, the executive budget document.

Legislative intent has been defined as language that specifies and clarifies the purpose for which a bill is enacted into law. Legislative intent provides

one with the background, justification, and reason for the passage of the measure.

A clear and concise statement of legislative intent helps administrators of state agencies and departments respond to the legislative expectations. It also serves as a basis for legislative evaluation of agency performance. A written statement detailing results expected pursuant to the passage of appropriations bills also helps an administrator plan and organize his department. It is not necessary or desirable, because of the volume of data alone, to include all of what can be defined as legislative intent in the bill. Legislative intent recorded in the supplemental documents such as journals, committee minutes, correspondence, and budget documents is of great value even though not a part of the bill. An administrator could be greatly hampered in efficiently and effectively carrying out the duties of his office if he were not aware of the basis upon which his office was funded and on which he will later be evaluated.

Governmental officials may not be in violation of law when they take a course of action different than that outlined in a statement of legislative intent. Legislative intent as recorded in the House or Senate Journals would only have an effect in the interpretation of a statute or an appropriations bill when such statute or appropriations bill is so unclear and ambiguous that a clear interpretation of the law is not possible without first considering legislative intent expressed in these legislative documents. Statements of legislative intent contained in committee minutes and other documents of the committee would have, at the most, the same effect in the interpretation of a statute. Former Attorney General Helgi Johanneson, in an opinion dated September 25, 1967, regarding the legislative intent of an appropriation for the Veterans Aid Commission contained in Chapter 284 of the 1967 Session Laws, stated:

"... the rules of statutory construction do not apply where the words of a statute are plain and unambiguous. Where the language of a statute is plain and unambiguous, we cannot indulge in speculation as to probable or possible qualifications which might have been in the mind of the legislature, but the statute must be given credit according to its plain and obvious meaning. However, the entire law dealing with a specific matter must also be considered, and not only a part thereof."

In each instance covered in this memorandum where there has been a question raised regarding the compliance with legislative intent, there appears to be, at least to a degree, a lack of compliance with legislative intent. The State Water Commission's

payment of funds, designated by the Legislative Assembly for the Souris-Red-Rainy Project, to the Upper Mississippi River Basin Commission was not envisioned by either the House or Senate Appropriations Committees; however, the statement of legislative intent in the Senate Journal was interpreted by the State Water Commission and the Attorney General in a manner making such a contribution possible since the moneys were designated to a project which remains in existence rather than to the Souris-Red-Rainy Commission. The Game and Fish Department's purchase of land in the Killdeer Mountain area, and the Governor's Council on Human Resources' funding of the Commission on the Status of Women are not supported by a different interpretation of legislative intent as expressed in the House and Senate Journals. In these two instances, the departments made expenditures for projects or programs which the House and Senate Appropriations Committees had deleted from the appropriations bill with the explanation for the deletion being set forth as a purpose of amendment in the House and Senate Journals; however, since the legislative intent was not set forth in a law, the departments had the prerogative of not following it.

The Budget Section by motion recommended that future Appropriations Committees give greater attention to delineating legislative intent. The Budget Section also recommended that the Legislative Procedures and Arrangements Committee of the Legislative Council consider procedures to strengthen the manner in which non-statutory legislative intent is conveyed by legislative committees.

CENTRAL PERSONNEL DIVISION

On September 5, 1973, a special meeting of the Budget Section was called for the purpose of considering Governor Link's proposal for the establishment of a model personnel office. Governor Link's office had requested approval from the Emergency Commission to receive and spend \$150,000 in federal funds for the establishment of a model personnel office. The Emergency Commission delayed action on the request since the legislative members of the Commission asked that the proposal be presented to the Budget Section of the Legislative Council for its review.

Governor Arthur Link's proposal for a model personnel division included the following comments:

"I. I propose to develop a Model Personnel System through executive directive to include those agencies over which I have executive authority. Agencies outside the Governor's executive authority may volunteer to participate.

"II. In consultation with the Director of Accounts and Purchases, I will select a Director of Personnel. The Director will hire and recruit whatever staff may be necessary. In consultation with the Director of Accounts and Purchases, the Director will select a consulting firm to assist in the implementation of the model system.

"III. I shall select with the assistance of the Director a bipartisan Steering Committee to assist in the development of personnel policies and procedures. This committee will make recommendations to me regarding a statewide personnel system and develop a legislative proposal for consideration during the 1975 Legislative Session.

"IV. The model personnel office will be charged with implementing the Ernst & Ernst Classification and Pay Plan in the participating agencies. It will develop and implement policies and procedures acceptable to the Steering Committee. It will develop the capability to successfully assess our human resource needs to assist the Executive Office of the Budget and the Legislature in determining the appropriations for good stewardship of those resources."

On February 1, 1974, a Central Personnel Division was established by Governor Link under the supervision of the Department of Accounts and Purchases in accordance with the Budget Section recommendations made on September 5, 1973. The Chairman of the Legislative Council appointed Senators Hoffner, Lips, and Representatives Reimers, Solberg, and Garnas to serve on a Joint Personnel Liaison Committee to supervise the Central Personnel Division project. For the report on the activities of the Central Personnel Division, please refer to the Central Personnel Division Advisory Steering Committee report.

EMPLOYEES' SALARIES

On May 6, 1974, a special meeting of the Budget Section was called to determine the extent to which there exists urgent needs to increase state employees' salaries. The State Emergency Commission had recently been presented a request for substantial increases in salaries for employees at the Grafton State School and the State Hospital. In regard to the Grafton State School and State Hospital, the Director of the Department of Accounts and Purchases expressed the opinion that all state employees have been hit hard by inflation, but that the employees of the Grafton State School have been hit

harder than most state employees since many of them are required to drive considerable distances back and forth to work and are also in an area where heating costs were exceptionally high last winter. The Emergency Commission believed that unless action was taken, there would be numerous employee resignations at the Grafton State School, he said. Of the \$187,386 made available for salaries at the Grafton State School, \$27,386 was granted from the state contingency fund, \$50,000 was transferred from the School's equipment line item, \$75,000 from an amount appropriated for a campus tunnel, and \$35,000 for amounts originally allocated for an electrical substation. As a result of these transfers and a grant from the state contingency fund, Mr. Dewing said that it was possible to increase salaries of the Grafton State School employees earning under \$460 per month by \$50 per month. According to Mr. Dewing, the \$330,000 in transfers within the State Hospital appropriation to salaries and wages make it possible for the Hospital to increase salaries in a manner similar to that approved for the Grafton State School.

The Executive Director of the North Dakota State Employees Association emphasized to the Budget Section that state employees' salaries are inadequate and that the problem is evident in every state department. He reported to the Committee that when hundreds of state employees are on food stamps, and hundreds more could qualify, the problem is serious. Included among the recommendations from his organization is a 20 percent increase for all employees on January 1, 1975, and an 8 percent increase on July 1, 1976.

The President of the North Dakota AFL-CIO reported that his organization recommends to the extent possible immediate adjustments to employees' salaries, and that an emergency appropriation be introduced during the opening of the Forty-fourth Legislative Assembly for needed salary increases with special emphasis on those receiving less than \$400 per month.

The Budget Section heard reports from a number of state departments indicating the need for salary increases and the problems that unanticipated levels

of inflation have created in regard to employee salaries. It was reported by the Director of Institutions that the Emergency Commission action taken in regard to the Grafton State School will require a deficiency appropriation in the amount of \$140,526 for the period beginning January 1, 1975, and ending June 30, 1975. He also reported that deficiency appropriations to cover unanticipated costs in other categories in the budgets of departments under his supervision could approach \$500,000.

The Chairman of the Salary Committee appointed by the State Board of Higher Education presented his Committee's report to the Committee. The report indicated that since the college budgets were presented to the Legislature in 1973, there has been a 24.5 percent decrease in the purchasing power of the dollar. He continued by pointing out that the difference between the effective rate of inflation and the average salary increase during that period is 12 percent and represents the cost of inflation borne by North Dakota state college and university faculty members during that period of time. The Budget Section did not take specific action in regard to state employees' salaries. A special meeting of the Legislative Council was called on May 16, 1974, to give further consideration to state employee salary needs. Please refer to the special Legislative Council study on state employee salaries for information regarding action taken by the Legislative Council regarding employee salaries.

Tour Groups

During late September and early October 1974, members of the Budget Section visited the major state institutions and projects. The main purpose of the visitations was to determine and evaluate the requests for funds in the area of major improvements and structures and hear reports from employees regarding the adequacy of current salaries, and to hear of any problems the institutions might be encountering during the interim because of unanticipated levels of inflation. The members of each of the Tour Groups and the institutions which they were assigned to visit are as follows:

Tour Group No. 1 — Senator Evan Lips, Chairman

Membership

Senator Evan Lips
 Senator George Longmire
 Representative Clark Jenkins
 Representative Harley Kingsbury
 Representative Charles Mertens
 Representative Robert Reimers
 Representative Malcolm Tweten

Institutions Assigned

University of North Dakota
 North Dakota State University
 Mayville State College
 Grafton State School
 Independent Study
 School for the Blind

Tour Group No. 2 — Senator Robert Melland, Chairman

Membership

Senator Robert Melland
Senator Walter Erdman
Senator Lawrence Naaden
Senator Theron Strinden
Senator Russell Thane
Representative Paul Bridston
Representative Charles Fleming
Representative Layton Freborg
Representative Robert Hartl
Representative Enoch Thorsgard

Institutions Assigned

State Hospital
Valley City State College
School of Science
Soldiers' Home

Tour Group No. 3 — Representative Oscar Solberg, Chairman

Membership

Representative Oscar Solberg
Representative Lawrence Marsden
Representative Ernest Miedema
Representative Olaf Opedahl
Representative Vernon Wagner
Senator Lester Larson
Senator Ernest Pyle

Institutions Assigned

School for the Deaf
Devils Lake Human Resource Center
Fort Totten Lake Region Junior College
San Haven State Hospital
Bottineau Branch — NDSU
Bismarck Junior College
Peace Garden
Heart of America Human Services Center — Rugby
Lake Metigoshe State Park
Penitentiary
Industrial School

Tour Group No. 4 — Representative LeRoy Hausauer, Chairman

Membership

Representative LeRoy Hausauer
Representative Ralph Christensen
Representative Howard Johnson
Representative Jack Olin
Representative James Peterson
Senator Clarence Schultz
Senator Jack Page
Senator Frank Wenstrom

Institutions Assigned

Fort Lincoln State Park
Dickinson State College
Dickinson Experiment Station
Badlands Human Service Center, Dickinson
Northwest Human Resource Center, Williston
Williston Experiment Station
Williston Branch — UND
Minot State College
State Fair Association
North Central Experiment Station, Minot

During the Budget Section meeting held on October 16, 1974, 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 in the Legislative Council office. Budget Section recommendations resulting from Tour Group recommendations include the following:

The Budget Section recommended that state charitable and penal institutions seek exemptions from the U.S. Department of Labor to exclude, to the extent possible, patient or resident labor from the federal minimum wage provisions. The Budget Section also recommends a concurrent resolution to the North Dakota Congressional Delegation asking them to propose amendments to the Fair Labor Standards Act allowing exemptions to the minimum wage provisions of the Act when the productivity of patient or resident labor is less than that required of an employed non-patient.

The Committee recommends a change of federal law since it was advised that with certain exceptions, patients performing tasks at institutions would have to be paid the minimum wage unless an amendment to the Fair Labor Standards Act was passed by the Congress. It was indicated in Tour Group reports that in many instances it takes three patients to perform work which would be required of one full-time employee.

The Budget Section by motion recommended to the legislative members of the Emergency Commission that they approve a personnel office on a pilot basis in the Department of Accounts and Purchases upon the following basis:

1. That the Emergency Commission is presented a plan and the usual form of budget, including a staffing plan for the model office;
2. That the office will be a division within the Department of Accounts and Purchases;
3. That the office is created to develop those elements which are common to both the Senate and House versions of Senate Bill No. 2116 during the 1973 Legislative Session; and
4. That the appointment of legislative members of the Steering Committee be made by the Legislative Council.

The Budget Section recommends that the president's house on the Valley City State College campus not be renovated, and that the Board of Higher Education make available to the

president an allowance for alternative housing, and that such allowance be included in the Executive Budget.

The Budget Section recommends and encourages the Governor to include funds in the Executive Budget for the establishment of a salary adjustment fund and contingency funds during the 1975-77 biennium in order to meet problems caused by unanticipated levels of inflation should they occur during the next biennium.

The Budget Section motion states that: "... The Budget Section of the Legislative Council recommends that it be given the authority to allocate funds to agencies, departments, and institutions operating in part or totally out of the State General Fund from a salary adjustment fund during the 1975-77 biennium. Funds shall be disbursed to the extent that funds are available pursuant to such appropriation and to the extent that the rates of inflation as documented by the appropriate Department of Labor inflationary indices are greater than anticipated by the Forty-fourth Legislative Assembly; that contingent funds for inflationary adjustments other than for salaries be established pursuant to line item appropriations in the appropriations bills of the state institutions, and that transfers from such line items can be made only upon approval of the Emergency Commission and the Budget Section when rates of inflation are greater than anticipated by the Legislature; that those departments operating totally out of special funds be provided line item contingency fund appropriations for all categories, including salaries, which transfers can be made to other line items only upon the approval of the Emergency Commission and the Budget Section of the Legislative Council, that the Budget Section shall have the authority to establish guidelines for the method for which its approvals shall be given which may include appropriate amounts below which only Emergency Commission approval is necessary, and that the Budget Section encourages the Executive Office of the Budget to prepare the Executive Budget in accordance with this proposal."

The Budget Section also took note of the fact that Tour Group No. 1, Senator Evan Lips, Chairman, had made the following recommendations for Budget Section and Senate and House Appropriation Committee consideration:

1. That the Executive Office of the Budget include in one bill all anti-pollution equipment necessary at all of the State's charitable and penal and educational institutions necessary to meet environmental standards.
2. That the Mayville State College request for a tartan floor on its Fieldhouse in lieu of doing

approximately half of the remodeling of Old Main be approved.

3. That support be given to the 11.9 per cent salary increase suggested by college faculty as an inflationary catchup on an emergency basis during the early days of the next Legislative Assembly.
4. That support be given to the Division of Independent Study's request for additional space for its film library.

State Park Service

The Superintendent of the State Park Service reported to the Budget Section at its March 20, 1974, meeting a need of \$72,374 to maintain and operate the State Park system during the current biennium. It was reported that the 1973-75 budget contained no provision to fill the void left by the federally funded Neighborhood Youth Corps Program. The current budget also did not include funds to operate the Little Missouri, Sulley Creek, Medora Memorial, and Streeter Memorial Parks even though funds have previously been appropriated to construct facilities at these sites. It was reported that additional funds required in order to operate the State Park Service and the State Parks included \$40,222 in salaries and wages; \$22,532 in fees and services; and \$33,620 in equipment replacement. The Superintendent said that due to the gas shortage, it is expected more North Dakota people will be spending their vacations within the State Park system, and thus, this would be a very inopportune time to close several of the state parks and deny North Dakotans the opportunity to use them. The Budget Section encouraged the Emergency Commission to make a grant from the state contingency fund to support the operation of the State Park system during the remainder of the biennium.

Flax Utilization Fund

At the January 9, 1974, meeting, the Budget Section was informed that through an oversight on the part of the Business and Industrial Development Department, no budget request for the flax research was submitted to the Forty-third Legislative Assembly. The Director of the Department of Business and Industrial Development reported that the failure to appropriate funds for flax research projects could halt flax research during the current biennium. It was reported that the flax research fund receives its moneys pursuant to a one-fourth of a cent per bushel tax on flax sold by producers in North Dakota. The Budget Section by motion stated that it finds the absence of an appropriation of moneys from the flax utilization fund during the Forty-third Legislative Assembly to have been an

inadvertent omission from the state budget since it was not the expressed intent of the Legislative Assembly to discontinue flax research during the 1973-75 biennium; therefore, the Budget Section recommends to the extent possible that flax research be continued during the current biennium, and that the Budget Section recommends support for an emergency and/or deficiency appropriation during the 1975 Legislative Session for flax research conducted during the current biennium.

Cost Impact of Energy Development

At the January 9, 1974, meeting, the Budget Section recommended that a subcommittee be appointed by the Legislative Council to evaluate the appropriations measures necessary to provide the additional services required during the construction and early operational phases of coal gasification plants in North Dakota. On October 8, 1974, pursuant to this motion, the Chairman of the Legislative Council appointed a special committee to review impact costs of coal or other energy development. The purpose of the appointment of the committee is to allow development of recommendations for submission to the Appropriations Committees regarding the handling of any overlapping or duplicating requests which have been included in state department and agency budgets as a result of the impact of energy development, and to permit the Legislative Assembly to appraise the state costs that will probably occur during the next biennium as a result of the development of energy-related industries in the State. Please refer to the special committee's report to review state-level impact costs of energy development and other information relating to the work of that committee.

National Disaster Act

At the October 16, 1974, meeting of the Budget Section, the Committee heard a report from the Office of State Disaster Emergency Services indicating that amendments to the National Disaster Act make it possible for the State to enter into an agreement with the Federal Government for a family and individual grant program in the event of a disaster. Under the provision of the Federal Act, the Governor could enter into an agreement with the Federal Government for grants to individuals or families without other means in the amounts not to exceed \$5,000 in the event of a disaster. Under the conditions of the Act, the Governor should have authority to commit the State to reimburse the Federal Government for 25 per cent of such grants. The Budget Section by motion recommends that the Office of Disaster Emergency Services introduce a bill on its own behalf during the Forty-fourth Legislative Assembly providing for grants to families and individuals in the event of a disaster, and that the Office of Disaster Emergency Services support the bill with the appropriate rules and regulations for implementation of the Act.

Other Considerations

On a number of occasions, for informational purposes, the Budget Section heard reports from state agencies regarding problems confronting their agencies. The reports heard include the following: The State Social Service Board reported that Congress had, since the adjournment of the Forty-third Legislative Assembly, passed a law placing the State's Medicaid Program in jeopardy unless the State Department of Social Services provided the supplemental income payments necessary after the federal assumption of the aid to the aged, blind, and disabled programs on January 1, 1974. It was reported that this created a special problem for the Social Service Board since the appropriation bill for the Board contains a section of legislative intent stating that such supplementation shall be provided by the counties. According to Social Service Board officials, the mandatory supplementation would amount to about \$547,000 during the last 18 months of the biennium. This problem was resolved by the State Social Service Board through the negotiation of agreements with the State's 53 counties.

The Superintendent of Public Instruction reported that school districts in the State receiving federal impact payments for students because of federal projects had encountered special problems because of the passage of Senate Bill No. 2026. It was pointed out that Senate Bill No. 2026 calls for a recognition of a certain portion of the federal impact payment in the computation of the Foundation Program per-pupil payments to school districts. An opinion had been received by the Department of Public Instruction from the Department of Education in Washington indicating that if this provision were put into effect, 70 school districts in

North Dakota would no longer be eligible for federal impact payments.

According to Department of Public Instruction officials, federal per-pupil impact payments approach \$500 per student per year. It was reported at a later meeting by Department of Public Instruction officials that Public Law 874 as passed by the Eighty-first Congress which provides for such payments was amended to provide that the federal impact payments may be deducted from the State's Foundation Program payments during the fiscal year ended June 30, 1974. It was noted that this amendment avoided the necessity of a special session of the North Dakota Legislative Assembly to amend Senate Bill No. 2026.

In addition, the Committee heard reports during the biennium regarding other Social Service Board budget-related matters, costs incurred by the State Securities Commissioner and the Department of Banking and Financial Institutions relative to legal actions in which their departments are involved, and reports from time to time from the Director of the Department of Accounts and Purchases regarding the budget status of the State General Fund.

This report presents the activities and recommendations of the Budget Section and its Tour Groups during the interim period. Since one of the major responsibilities of the Budget Section 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 phases of its activities will be submitted for distribution at a later date.

BUDGET "A"

The Forty-third Legislative Assembly transferred the responsibility for the review of audits and fiscal review of state government to the Legislative Council. Section 54-35-02.1 of the North Dakota Century Code directs the Legislative Council to appoint a Legislative Audit and Fiscal Review Committee as a division of the Committee on Budget. In addition to carrying out its statutory responsibilities, Budget Committee "A" was assigned House Concurrent Resolution No. 3035, which calls for a study of current practices regarding the handling of interest earned on dedicated funds on deposit in the State Treasury, and House Concurrent Resolution No. 3007 calling for a study of the North Dakota statutes governing the bonding of state employees.

In the Act creating the Committee, the Legislature stated that the Committee was created: "For the purposes of studying and reviewing the financial transactions of this state; to assure the collection and expenditure of its revenues and moneys in compliance with law and legislative intent and sound financial practices; and to provide the legislative assembly with formal, objective information on revenue collections and expenditures for a basis of legislative action to improve the fiscal structure and transactions of this state."

In setting forth specific duties and functions of the Committee, the Legislature said: "It shall be the duty of the legislative audit and fiscal review committee to study and review audit reports as selected by the committee from those submitted by the state auditor, confer with the auditor and deputy auditors in regard to such reports, and when necessary, to confer with representatives of the department, agency, or institution audited in order to obtain full and complete information in regard to any and all fiscal transactions and governmental operations of any department, agency, or institution of the state."

The Lieutenant Governor by law, serves as the Chairman of Budget Committee "A" (Legislative Audit and Fiscal Review Committee). Other members of the Committee appointed for the interim work were: Representatives LeRoy Hausauer, Clark Jenkins, Howard Johnson, Dale Linderman, James Peterson, Vernon Wagner, Gerhart Wilkie; Senators Francis Barth, Lester Larson, Evan Lips, Frank Wenstrom.

At the organizational meeting of Budget Committee "A" which was held on Wednesday and Thursday, June 13-14, 1973, Lieutenant Governor Wayne Sanstead, Chairman, appointed Senator Evan Lips as Vice Chairman of the Committee.

During this interim, the State Auditor presented 66 audit reports to the Committee. A list of these audits is on file in the Legislative Council office. In addition, 45 were filed with the Committee, but were not formally presented to the Committee based on its desire to hear audits of major agencies and audit reports containing major exemptions. During the interim the Committee also reaffirmed its desire to have the audits contain certain information requested by the Committee in the past. Such suggestions and recommendations regarding what should be included in the audit reports appears in previous reports of the Committee.

The report of the Committee on Budget "A" was submitted to the Legislative Council at the biennial meeting of the Council held at Bismarck. The report and recommended legislation were adopted for submission to the Forty-fourth Legislative Assembly by the Legislative Council in November 1974.

INTEREST ON PUBLIC FUNDS

In accordance with House Concurrent Resolution No. 3035 which directed the Legislative Council to study the current practices regarding the handling of interest earned on dedicated funds on deposit in the State Treasury, a report was presented to the Committee providing information regarding the amount of special funds on deposit with the State Treasurer. The report indicated that as of June 30, 1973, \$175,317,772.39 had been invested by various state agencies, departments, and institutions with earnings on these investments amounting to \$9,014,948.46 for the year ended June 30, 1973. The major portion of such investments were derived from moneys in the State's trust funds. It was also reported that, as of June 30, 1973, all state agencies, departments, and institutions had on deposit with the State Treasurer \$46,793,049.16 in special funds, and there existed \$52,450,373.86 in General Fund moneys, for a total of \$99,243,423.02. Included in such amounts was \$11,741,942.06 for the Highway fund, and \$2,390,039.63 for the Game and Fish Fund. The State Treasurer had deposited \$57,880,041.48 of such funds with the Bank of North Dakota, and invested \$40 million in Bank of North Dakota certificates of deposit. For the year ended June 30, 1973, the CD's generated interest earnings of \$1,840,825.40 which were credited to the General Fund. Some of the interest earned related to the balance in the state General Fund; however, a portion of it also related to investment of special fund moneys. Since there are no provisions of state law requiring the State Treasurer as a matter of general policy to invest moneys on deposit in special funds in the State Treasury separately for each state

agency and institution, earnings arising from the general cash account of the State Treasurer which constitutes the accumulation of all moneys which have been deposited with him, are deposited directly to the General Fund except in the following instances:

1. Earnings are generally deposited to the credit of the dedicated fund when a fee, charge, or tax is authorized and is to continue until such time as sufficient funds have been accumulated to meet a specific obligation. Examples: Vietnam Bonus Bond Sinking Fund, Revenue Bond Sinking Funds to retire university and college revenue bonds.
2. Earnings are generally deposited to the credit of the dedicated fund when contributions to the fund are based upon variable rates which are to be the minimum necessary to meet either current costs or long-term future obligations. Examples: State Bonding Fund, State Fire and Tornado Fund, Workmen's Compensation Bureau.
3. Earnings are generally deposited to the credit of the dedicated fund when the contributions to the fund are to provide for employees retirement, and such fund includes contributions from the employee. Examples: Public Employees Retirement Fund, Highway Patrol Retirement Fund, and the Teachers Retirement Fund.
4. Earnings are deposited to the credit of the dedicated fund when such is required pursuant to constitutional provisions. Examples: State Land Department.
5. Earnings are credited to the dedicated fund when the fund consists of moneys held in trust for residents of the State's charitable and penal institutions. Examples: Patient Trust Funds at the Grafton State School and the State Hospital.
6. Earnings are credited to the special fund when one of the purposes of the agency operating from that fund is to generate a profit. Such earnings may at a later date be subject to transfer to the General Fund pursuant to a directive of the Legislature. Examples: North Dakota Mill and Elevator Association and the Bank of North Dakota.
7. Earnings are generally allowed to be credited to auxiliary enterprise accounts when such enterprises are established to provide low-cost auxiliary services without support from state general tax revenues. Examples: Auxiliary enterprises, such as dormitories, bookstores, athletic activities, and food service facilities on the State's college campuses and charitable and penal institutions.

Justifications for depositing earnings from moneys, other than for the exemptions listed above, in the State General Fund include the following:

1. The State Treasurer is in a better position to invest the maximum amount of funds, and yet maintain a sufficient operating cash balance when the investments are made on a pooled basis. Additional costs would be involved if the State Treasurer were to manage a separate investment portfolio for each fund. Also, under a separate portfolio procedure, some funds probably would not be invested since the balances would be either too low for investment purposes or fluctuate to the extent that adequate cash flow could not be maintained along with investments in certificates of deposit.
2. Since the state executive agencies provide without cost many services to departments operating from special funds, including budget, accounting, depository, checkwriting and other services, it is considered that the earnings from investment of these moneys is a reasonable reimbursement for such services.
3. Studies have pointed out that even though a fee is charged for the particular agency's services, it is not necessarily the intent of the Legislature to limit the fee to the net cost of the service since a portion of the charge, fee, or tax relates to the privilege to do business, or to maintain a reasonable amount of control over certain activities, or to authorize a particular agency to use the name and powers of the State of North Dakota to support its operations.
4. In some instances, the special funds are supplemented by General Fund appropriations, and any interest earned on special funds which is deposited to the State General Fund is in accordance with the policy of spending special funds before General Fund moneys.

Representatives of the State Highway Department, State Wheat Commission, and the Game and Fish Department encouraged the Committee to introduce legislation making it possible for them to deposit to their special fund balances any interest earned on special fund balances maintained by their department. Highway Department officials reported a current special fund balance of \$11.7 million with an average cash balance during 1973 of \$8.7 million. Based upon a six percent rate of return, investment of such funds could return \$500,000 per year to the State Highway Department. The State Game and Fish Commissioner reported that approximately \$2 million in special funds for that department would be available for investment. At an estimated rate of six

percent, this would mean an addition of \$120,000 per year of collections to the State Game and Fish fund. The average special fund balance maintained by the State Wheat Commission ranged between \$700,000 and \$800,000 per year. An investment of such amounts at an average rate of six per cent would return to the fund amounts approaching \$60,000 per year. Representatives of these departments base their request for the return of interest earned to the special funds upon the needs of such departments for additional revenues. It was pointed out by the State Highway Commissioner that because of the energy crisis, there has been a substantial reduction in Highway Department revenues. Inflationary factors and additional departmental responsibilities were also reasons stated in support of the return of interest earned on special funds to the special fund. The three departments expressed a willingness to reimburse the State General Fund for any costs incurred by the various state departments and agencies for providing services including accounting, budgeting, and other services of governmental agencies rendered to them.

The Committee recommends a bill which provides that those agencies operating entirely from special funds and maintaining an average special fund balance in excess of \$300,000 will receive from the State Treasurer 90 percent of the interest earned on amounts in excess of the \$300,000 minimum balance. The interest earned on the amounts up to \$300,000 and 10 percent of the interest earned over \$300,000 would be a reimbursement to the State General Fund for services rendered by the various state agencies and departments providing non-billed services to such special fund departments.

BONDING OF PUBLIC EMPLOYEES

In accordance with House Concurrent Resolution No. 3007 which directed the Legislative Council to study bonding of public employees, a memorandum containing a summary of the statutory bonding requirements and the coverage required by law for various officers and employees of the State and its political subdivisions was presented at the October 1973 meeting. The memorandum pointed out that statutory requirements for bonds in North Dakota generally cover two conditions: The faithful discharge of performance of public officers' duties, and the due or proper accounting of all moneys collected or entrusted to such persons' care. According to Section 44-01-12 of the North Dakota Century Code, the bond of each civil officer shall be construed to cover duties imposed by laws passed subsequent to the execution of such bond as well as to those duties imposed at the time of the execution of the bond. Section 44-01-07 requires each civil officer who shall give a bond to render a true account of all moneys and property of every kind that shall come into his hands and shall pay and deliver over

the same according to law. Official bonds are required, not for the benefit of the officeholder, but for the protection of the entire citizenship. The bond of a public officer is in effect a contract between the officer and the government binding the officer to discharge the duties of his office, a collateral security for the faithful performance of those duties, and an obligation binding the sureties to make good the officer's default.

As amended following a 1965-67 biennium committee study, Chapter 26-23 of the North Dakota Century Code provides for blanket bond coverage for employees of state agencies, departments, institutions, and political subdivisions. The blanket bond covers all personnel without the necessity of scheduling an employee's name or position as part of the bond, and new employees are automatically included without notice to the fund. In regard to the financial status of the State Bonding Fund, the Insurance Department, at the request of the Committee, reported that, as of September 10, 1973, the fund had assets valued at \$4.6 million.

In another report presented to the Committee, information on bonding of key personnel of 27 state agencies, departments, and institutions was presented. It was noted that the sufficiency of bonding coverage for certain positions was dependent upon the existence of adequate financial and internal controls. The current coverage provided for certain key positions by the State Bonding Fund ranges from \$1,000 to \$500,000 per position. The larger coverages relate to positions with greater administrative or fiscal responsibilities. Positions covered for \$500,000 include the Vice President for Finance and the Director of Accounting at UND, the State Treasurer, and several employees of his office. In addition to Bonding Fund coverage for Bank of North Dakota employees, which is \$50,000 for the President and lesser amounts for others, the Bank provides coverage under a private banker's blanket bond policy, which has recently been increased from \$200,000 to \$1,700,000 per employee.

According to Section 26-23-02.1, the blanket bond coverage for officials required to be bonded by law may be greater but not less than the largest bond amount required for such position. Unless deemed excessive, the State Bonding Fund honors most requests for bonding coverage in the amount specified by the agency. From the analysis presented to the Committee, it is noted that the coverages for the positions listed equal or exceed the amount required by law.

At the request of the Committee, the Insurance Commissioner reported on suggestions for changes in bonding procedures. The department questioned whether blanket bond coverage could be provided by the fund for public officials required by statute to

provide an individual bond. It was also noted that the current bonding fund statutory definition of public employees limits such employees to those who are required by law to be bonded. The department asked that legislative intent regarding which departments should be allowed to obtain coverage from the State Bonding fund be clarified. It was reported that the fund currently is bonding employees of any institution, agency, department, board, or commission established by law.

The Committee recommends a bill which requires periodic review of employee bonding coverage by state agencies, departments, and institutions, redefines public employee to mean any and all persons employed by the State or any of its political subdivisions, defines "political subdivision" and "state" for purposes of the Bonding Fund, clarifies blanket coverage for public officials, and disallows coverage under the Bonding Fund for employees of the occupational and professional boards and commissions under Title 43 of the North Dakota Century Code and the State Bar Association.

STATE AUDITOR'S OFFICE

Section 54-10-04 of the North Dakota Century Code requires the Legislature to provide for an audit of the State Auditor's office. Pursuant to this requirement, the Legislative Council contracted with the firm of Eide, Helmeke, Boelz & Pasch, Certified Public Accountants, Fargo, North Dakota, for a performance audit of the State Auditor's office for the period beginning July 1, 1969, and ending December 31, 1972. Even though the audit covered fiscal data only through December 31, 1972, the performance review related to activities of the department up through and during the spring of 1973. At the June 1973 meeting, the firm presented its report on the State Auditor's office to the Committee. A copy of the report is available and on file in the Legislative Council office. Among the recommendations contained in the report were the following:

1. That the recommendations of the Legislative Audit and Fiscal Review Committee be followed on all audits as to the type of financial statements and other information to be included in financial reports.
2. That the financial statements of budgetary funds reflect the modified accrual basis of accounting so as to conform to generally accepted accounting principles for governmental entities.
3. That financial statement format be consistently followed in all instances.
4. That care be taken to see that the Auditor's report on the financial statements is con-

sistent with the accounting basis of such statement.

5. That care be taken to see that financial reports contain all required informative disclosures.
6. That a schedule be included in each of the financial reports of counties showing the changes in each city, township, and school district agency fund.

In addition, the audit report included recommendations for improvement of the audit function which related to planning for the audit, evaluation of internal control, audit working papers, review for supervisory auditors, and staff training and development.

The firm of Eide, Helmeke, Boelz & Pasch also recommended that legislation be introduced relieving the State Auditor of his responsibility to serve on a number of executive boards and commissions. In support of this recommendation, representatives of the firm reported that the State Auditor should be as independent of the executive branch as possible. At the present time the State Auditor serves on the Public Employees Retirement Board, the Board of University and School Lands, and the Tax Equalization Board.

In regard to the audit of political subdivisions, the firm reported that all counties are being audited at least once every two years; however, in respect to other political subdivisions, only about 80 percent are being audited within a two-year period of time. The firm indicated that in its opinion it is not possible for the staff to comply with the statute requiring biennial audits since there are just too many audits and too few auditors. In addition, they indicated that if the State Auditor's office is to comply with the audit recommendations for improving the quality of audits, even fewer of the political subdivision audits will be completed in accordance with the law. It was pointed out that the governing boards of the political subdivisions are permitted by law to contract for an audit by a certified public accounting firm in lieu of the State Auditor's examination.

In response to the report, the State Auditor reported to the Committee that he had established goals for the operation of his office and that he had instituted training programs for his auditors to improve the effectiveness of their work. In addition, he indicated that the report basis has been changed to a modified accrual basis of reporting in addition to other efforts to upgrade the financial audits prepared by his office. The State Auditor also suggested to the Committee that his office serve as an office for review of political subdivision audits and that such audits be conducted by certified public accountants

or public accountants and that the remaining audit staff be placed under a legislative auditor who would be responsible for auditing the state agencies, departments, and institutions. In regard to the audit of political subdivisions, he indicated that his office under this plan would continue to conduct spot checks on such audits of political subdivisions and would be involved in cases of embezzlement and other special problems. The Committee asked Legislative Council staff to provide assistance to the State Auditor in preparing legislation for introduction by his department to accomplish his proposed recommendations for an office of legislative auditor and for the audit of political subdivisions by private accountants. The Committee also recommended that the Legislative Council include sufficient funds in its appropriation for the next biennium to perform a performance review and financial audit of the State Auditor's office for the period ending June 30, 1975. The Committee complimented the State Auditor for his efforts to improve the operations of his office and for his recommendations to place the audit function in the Legislative Branch to make it more effective in its ability to serve state government.

Because more time is being devoted to individual audits in order to develop adequate working papers and upgraded financial audits, the State Auditor completed less than the usual number of audits of state agencies, departments, and institutions during the current biennium. At the last meeting of the Committee, the Auditor reported a backlog of audits to be completed by his office, and noted that a significant number of audits have been delayed by his office until the beginning of the next biennium.

To assist the Auditor during the current binennium the Committee encouraged the Auditor to conduct state audits on a biennial rather than an annual basis which had been the custom in the past.

As part of his auditing procedures, the State Auditor has asked state agencies, departments, and institutions being audited to comment on the audit recommendations. The Committee supports the Auditor's practice of including management's comments on the recommendations in the audit reports presented to the Committee.

To assist the State Auditor's office in conducting audits where the possibility exists of private moneys being commingled with public funds, the Committee recommends a bill which would permit the inspection, audit, or examination of certain accounts with financial institutions by the State Auditor, the Commissioner of Banking, or the Attorney General in cases where private or public funds are commingled. Before such examination could be made, the person desiring to examine such accounts would be required to obtain an order from the district court.

The bill provides that no financial institution shall be subject to damages as a result of providing information or making their accounts available for inspection or examination.

OCCUPATIONAL AND PROFESSIONAL BOARDS

During the interim, the State Auditor reported that the statutory requirement calling for an annual audit of the occupational and professional boards and commissions was creating a hardship on those with limited funds. It was noted that the fee for the private audit at times exceeds the assets of the board or commission. The Committee recommends a bill which requires an audit of such boards and commissions at least once every two years, instead of annually.

BILLINGS TO RESPONSIBLE RELATIVES

The Forty-third Legislative Assembly passed legislation relieving parents of residents and patients in the State Hospital, Grafton State School, and San Haven State Hospital from the payment of billings for care and treatment for their children after they have become adults. The law went into effect on July 1, 1971, and from that date responsible relatives were no longer held responsible for the cost of care and treatment incurred by their children after they become adults. The law did not provide for the writeoff of billings to responsible relatives for their children which had accumulated prior to that time; however, the Committee recommends a bill which provides that on July 1, 1975, the supervisory departments of the Grafton State School, the San Haven State Hospital, and the State Hospital shall writeoff from their records, and shall discontinue making efforts to collect from parents of patients uncollected amounts previously determined to be due for care and treatment provided for their children after their children had reached the age of 18 years. It was reported that over a period of years, the collections to the operating funds of the institutions involved could be reduced by more than one-half million dollars if the bill passes.

STATE OUTDOOR RECREATION AGENCY

At the request of the Committee, the State Outdoor Recreation Agency made suggestions for improvement in the budgeting procedures of that agency. The State Outdoor Recreation Agency provides matching funds for selected projects of the Game and Fish Department, Historical Society, Water Commission, State Forest Service, and State Park Service. The Agency authorized the allocation of federal funds to the above-mentioned agencies for approved projects. The State Outdoor Recreation Agency reported that agencies could best present their project funding needs directly to the ap-

appropriations committees and that department budgets should reflect such amounts. The agency recommended that the present procedure remain unchanged, however, until such time as a decision is arrived at regarding the creation of a Department of Natural Resources. Since state agencies currently benefiting from State Outdoor Recreation funds would be a part of a Department of Natural Resources, the Agency suggested that project allocation authority be given to the Director of the Department of Natural Resources.

POSTAGE METERS

At the July 23, 1974, meeting, Representative Myron Atkinson cited several examples of what he believed to be improper use of public funds to publicly support a partisan position. He suggested that state departments should be informed that the use of state funds, state postage meters, state telephones, and other state paid items for political purposes is not an acceptable or tolerable activity. He also suggested that there should be central control over the use of such things as the postage meters. In response to this concern, the Committee asked for reports from departments responsible for the control over telephone services and postage meters, and also requested an inventory of postage meters used by state departments and agencies. It was pointed out that it is contrary to law for state employees to use state facilities for personal uses, since Section 185 of the Constitution provides that the State may not make donations to private individuals or corporations except for the benefit of the poor. It was also pointed out that there are various penalties provided by law for the expenditure of funds outside of legislative appropriations.

At the October 18, 1974, meeting, a Legislative Council staff report was presented indicating 31 postage meter machines being used by agencies in the Bismarck area. Of that number, three are under the control of the Director of Institutions' office. It was pointed out that there is no central control over the use of postage meters nor a file indicating which agency has a postage meter or the identification number of that meter. The Committee recommends a bill requiring that all agencies desiring to use postage meters and mailing machines, or to continue the use of meters or mailing machines presently in use, will be required to receive approval from the Director of Institutions' office. In regard to telephone usage, the Director of Institutions reported that without the installation of expensive computer devices, it is not possible to trace telephone calls through the Combined Automatic Telephone Service System. The Director of Institutions reported that even though it is not economically justifiable to police the usage of state telephones, his office has to the extent possible discouraged misuse of phones for other than state purposes.

INSURANCE COVERAGE ON HISTORIC COLLECTIONS AND SITES

At the request of the Committee, the Legislative Council staff reported on insurance coverage which the Historical Society carried on its historical collections and sites. The report indicated that coverage for such collections, library collections, and furniture and equipment housed in the Liberty Memorial Building totals \$805,000. It was noted that such coverage was below the current value of the historical contents of the building. It was reported by the Department that much of the property under the control of the Historical Society is not covered by insurance. One problem in providing adequate coverage is that a definite value cannot be placed on many of the historic items. It was noted that a five or six-year study may be required in order to determine what the appropriate value of some of the historic collections are.

DELINQUENT FARM LOAN POLICY

At the October 1973 meeting, the Committee heard a report on the status of delinquent farm loans and contracts of the State Land Department. It was reported that, as of October 18, 1973, past due loans amounted to \$184,648.08, or .5 percent, of the \$36.8 million outstanding. On June 30, 1973, such delinquencies were \$503,842.50, or 1.42 percent, of the total outstanding loans. In regard to land contracts on June 30, 1973, it was reported that \$42,127.55, or .76 percent, were delinquent, while on October 18, 1973, this amount had been reduced to \$18,383.70, or .34 percent, of total contracts outstanding. At a later meeting when the department's audit was discussed, it was reported that the Board of University and School Lands had adopted a policy for penalties on delinquent loans and had reduced the waiting period before commencement of foreclosure proceedings from three years to one year.

OTHER AREAS OF COMMITTEE REVIEW

At the request of the Committee, the Legislative Council staff reported on compliance with recommendations in the audit of the State Parole and Probation Department on the bonding of employees. It was noted that the Department had obtained coverage for all agents or employees responsible for moneys or property.

During the interim, the Committee was informed by the Auditor that a federal audit of the Law Enforcement Council contained several major exceptions. In his remarks to the Committee on the status of such exceptions, the Council Director noted that, in the event certain grants are disallowed, the Federal Government might reduce federal grants rather than ask for a return of funds. At the October 1974 meeting, a representative of the Council reported that the federal audit, in its final form, had

contained only one major exception and that the department had taken action to resolve it.

When the audit of the Bank of North Dakota was reviewed by the Committee, the State Auditor reported that his office had not audited the appropriated funds of the Bank, and advised that the Certified Public Accountants' audit of the Bank did not report on the extent that funds appropriated by the Legislature were spent. The State Auditor assured the Committee that he would request the Industrial Commission or the Bank to ask the CPA to include in his report information on the Bank's appropriated funds.

In its review of the audit of the North Dakota Office of Economic Opportunity, the Committee observed that the department's federal funds and in-

kind contributions were not being appropriated by the State. The Committee recommends that the department's funds be specifically appropriated by the Legislature.

FUTURE STUDIES

At the last meeting of the Committee, Committee members suggested that the Committee on Budget "A" (Legislative Audit and Fiscal Review Committee) during the next interim review the manner in which federally funded research projects are accounted for at the State's colleges and universities. Also of interest to Committee members is the amount of and manner in which indirect cost reimbursements for the handling of federally funded research projects are handled at the State's colleges and universities.

BUDGET "B"

Senate Concurrent Resolution No. 4021 directed the Legislative Council to conduct a study of the operations of the North Dakota State University Cooperative Extension Service and the Experiment Stations, to review the original functions they were intended to perform, the responsibilities presently placed upon them, the services currently being performed, the benefits resulting from current operations, and any modifications that might improve their utility to the State and maximize their benefit to all citizens of the State. The Committee was also assigned the section of Senate Concurrent Resolution No. 4064 calling for a study of revenue bonds issued by junior colleges. The membership on Budget Committee "B" consisted of Senators Robert Melland, Chairman, Theron Strinden, Vice Chairman, Walter Erdman, Robert Nasset, Clarence Schultz, Russell Thane, Frank Wenstrom; and Representatives Charles Fleming, Layton Freborg, LeRoy Hausauer, Harley Kingsbury, Jack Olin, Olaf Opedahl, and Enoch Thorsgard.

The report of the Committee on Budget "B" was submitted to the Legislative Council at the biennial meeting of the Council held at Bismarck. The report and recommended legislation were adopted for submission to the Forty-fourth Legislative Assembly by the Legislative Council in November 1974.

COOPERATIVE EXTENSION SERVICE AND EXPERIMENT STATIONS Experiment Stations

Each state in the United States is legally entitled to have an agricultural experiment station. Two federal laws originally provided this legal basis. The first of these was the Morrill Act of 1862 which provided grants of federal lands to each state, and to use these lands and the income from them for the establishment of a permanent endowment of public institutions of higher learning where the objective would be, without excluding other scientific and classical studies, to teach such branches of learning as are related to agriculture and the mechanical arts. Twenty-five years later, in 1887, the second federal law was enacted. This became known as the Hatch Act of 1887, and it provided for state agricultural experiment stations in connection with the colleges established in the several states under the Morrill Act. In 1955, the Congress consolidated a number of laws relating to agricultural research into the Hatch Act as amended. This law serves as the principal federal authorization for annual appropriations made by Congress to agricultural experiment stations. The first Legislative Assembly of 1890 established an agricultural experiment station in connection with the agricultural college.

Branch agricultural experiment stations do not receive federal funds under the Hatch Act as amended for routine financial support. Therefore, each of the branch stations is dependent for its maintenance on the state legislative process. The first branch station was designated to be located near Edgeley, North Dakota. The land was donated and the 1893 Legislature provided a small appropriation to establish an irrigation well. Other branch stations established under the donation of land policy of the early legislatures are: Dickinson, 1905; Williston, 1907; Langdon, 1908; and Hettinger, 1909. The 1945 Legislative Assembly accepted from the Ward County Commissioners three quarter sections of land with existing buildings, appropriated \$40,000, and the North Central Experiment Station at Minot was established. In 1950, the Agronomy Seed Farm and the section of land on which it is located near Casselton was donated to the Experiment Station. The most recent addition to the branch station is the Carrington Irrigation Branch Station. The 1957 Legislature appropriated \$67,200 for the purpose of locating and acquiring a site for the proposed irrigation station.

At the present time, the Main Station utilizes approximately 1,800 acres of land which is part of and contiguous to the NDSU campus, and the seven branch stations own approximately 6,200 acres of land. The 1972-73 budgeted payroll includes 345 persons employed at the main campus in Fargo, 27 persons employed at the branch stations, with 152 of these persons being professional, 122 non-professional, and 98 graduate assistants.

Cooperative Extension Service

The Smith-Lever Act of 1914 with subsequent amendments is the basic federal legislation governing the organization and programs of the Cooperative Extension Service. The basic elements of this legislation permit the appropriation of federal funds to the states and counties in support of state and local programs oriented to agriculture, home economics, and related program areas. The breadth of this federal charter permits the broad scope of programs maintained by the Cooperative Extension Service.

The 1915 North Dakota Legislative Assembly passed legislation accepting the Federal Smith-Lever Act and delegating to North Dakota State University the responsibility for overall administration of the Cooperative Extension Service and designating the boards of county commissioners as the local sponsoring groups. By local election, each of the counties of the State authorized the establishment of a county extension program and authorized the board of county commissioners to

support the county programs through the appropriation of county funds.

The Cooperative Extension Service represents the educational arm of the United States Department of Agriculture and the land grant colleges. The Cooperative Extension professional staff consists of a field staff located in the counties and the supporting state staff at North Dakota State University. The county staff consists of 97 employees in 52 counties. The program distribution of specialists is as follows: nine in family living, four in expanded food and nutrition; 32 in agriculture, marketing, rural development, and public affairs; five supporting the statewide 4-H program; five in communications; and seven administrators and supervisors.

For the purposes of county programs and staff supervision, the State is divided into three extension districts: east, northwest, and southwest. District supervisors coordinate program, policy, personnel and fiscal matters; they are the primary liaison officer between county extension activities and North Dakota State University. Each of four specialist groups is supervised by the state program leader. The Cooperative Extension Service programs are broadly divided into four groups: 4-H youth, agricultural production, community development, and home economics. All agriculture and community development specialists are officed with their counterparts in the Experiment Station and resident teaching subject matter areas.

Other Studies

During the same time that the Committee was studying the Cooperative Extension Service and the Experiment Stations, a Cooperative Extension Service Task Force was reviewing the Cooperative Extension Service, and the Consultation Board to the Board of Higher Education was reviewing both the Cooperative Extension Service and Experiment Stations. The three above-mentioned groups exchanged information and heard progress reports regarding efforts that had been undertaken by each group. Budget Committee "C" of the Legislative Council was also studying areas of interest to this Committee since it was conducting a performance review (operational audit) of North Dakota State University which included the Experiment Station and Cooperative Extension Service. The Committee encouraged Budget Committee "C" to select North Dakota State University for a performance review because of the value that a review of the management operations would have to the Committee in its study.

Selection of Research Projects

At the June 25 and 26, 1973, meeting of the Committee which was held on the North Dakota State University campus, University officials reported

how research projects arise and how they are classified. It was reported that research projects may arise from one or more of the following areas:

1. In-house: The individual researcher recognizes a problem within his discipline area and desires to do applied or basic research on it.
2. Funded request: Nearly eight per cent of the Experiment Station research is partially funded by "seed" money from agency or commodity groups interested in promoting a particular research project.
3. Non-funded request: The bulk of the research effort arises from a recognized need among the persons supporting the State Agricultural Experiment Station.

It was reported that a proposed project is critically reviewed by an interdisciplinary peer committee of seven members. Project leaders make formal research reports annually on each of the active projects for which they are responsible. It was also reported that on an annual basis the Director of the Experiment Station is to account for all moneys expended and the use of scientific manpower under his administration. A research project is completed when it is deemed complete by the project leader, his peers, and the department chairman. According to University personnel, approximately eight per cent of the over 200 actual projects are terminated annually and replaced by new research projects. It was reported that research projects at the Experiment Station are classified in terms of the nine national goals for agricultural research promulgated in 1966. The nine goals are the following:

1. Ensure a stable and productive agriculture for the future through wise management of the Nation's resources.
2. Protect forests, crops, and livestock from insects, diseases, and other hazards.
3. Produce an adequate supply of agricultural products.
4. Expand the demand for agricultural products by developing new and improved products with better quality.
5. Improve efficiency in the marketing system.
6. Expand export markets.
7. Improve the health, nutrition, and well-being of the American consumer.
8. Assist rural Americans to improve their level of living.
9. Promote community improvement, including development of beauty, recreation, en-

vironment, economic opportunity, and public services.

Organizations Report

At the June 25 and 26, 1973, meeting, representatives of organizations which have a special interest in the development of agriculture gave their observations on the effectiveness of the Cooperative Extension Service and the Experiment Stations. Mr. Richard Crockett, Executive Vice President of the Greater North Dakota Association, emphasized the need that the commercial farmer of today has for answers to specific problems since agriculture is the most viable industry in America today and is very competitive in the world market. He suggested that a regional approach be explored for the delivery of Cooperative Extension services rather than the present day, county agent program. He also stressed the need for improved methods of communicating results of research conducted by the Experiment Station. It was reported that the Greater North Dakota Association had conducted an opinion poll of its 2,740 members regarding agricultural research. Forty percent of the respondents expressed the opinion that agricultural research is absolutely necessary, while 15.2 percent said that it is less important than it has been in the past. In regard to the Cooperative Extension Service, the Greater North Dakota Association report indicated that 20.19 percent of those responding said the Cooperative Extension Service is very important, while 42.69 percent said they believed it is necessary with 37.12 percent indicating that the Cooperative Extension Service work is less important today than it has been in the past.

Mr. Stanley Moore, Secretary of the North Dakota Farmers Union, expressed support for the review of the goals of the Experiment Station and Cooperative Extension Service. He emphasized the importance of impartial research in the development of agriculture. It is not sufficient or in the public interest to have only private industry conducting agricultural research. It was also his opinion that a regional specialist-type program with the Cooperative Extension Service may have merit, but his organization may not support the discontinuance of the county agent program. He encouraged the Cooperative Extension Service to seek out new, improved methods of communications to reach those people in the State who may not necessarily be farming but in some way or another are connected with agriculture.

Mr. Francis S. Simmers, President of the North Dakota Farm Bureau, emphasized the need for flexibility in Experiment Station research projects. In his opinion, the Experiment Station has been slow in dealing with some of the problems encountered in agriculture. He pointed to the wild oats problem as one where the problem is of considerable severity yet little has been done to solve it.

Mr. Jack Dahl, President of the North Dakota Stockmen's Association, recommended that the Cooperative Extension Service be organized into several multi-county extension areas, preferably by topographical and ecological areas. He also suggested that the specialist approach could apply to 4-H programs, or that such programs might be abandoned with greater emphasis placed upon vocational training in the public schools. It was also suggested that extension leaders spend more time evaluating "grass roots" needs. He recommended an Extension veterinarian on the Cooperative Extension Service staff. In regard to the Experiment Station, he recommended an increased emphasis on the dissemination of research findings and a keener awareness of industry needs. It was also suggested that research priorities should be determined by the economic value of the commodity to the people of North Dakota. He also recommended that duplicate research projects be avoided and applicable research findings be adopted and made suitable for use by other stations whenever possible. Additional beef cattle substations were also recommended. He concluded by encouraging more cooperative research efforts with individual producers to make new findings ever more practical and economical.

Mr. Miles Maddock, representing the National Farmers Organization, suggested that county agents be used in a way in which they help the farmer understand and implement procedures based upon the economics of production. He said that if big commercial farms are to be developed, area specialists rather than county agents would be a better approach, and perhaps under the present system a sprinkling of regional specialists would be helpful. Mr. Tom Schockman, President of the North Dakota Cattle Feeders Association, indicated that the Experiment Station could be of greater assistance to calf producers in the following areas: carcass evaluation, genetics, animal health through the Diagnostic Center, feed trials, livestock housing and marketing information, and other statistics. Mr. David Sinner, a Director of the North Dakota Crop Improvement Association, complimented the work of the Experiment Station in its efforts to develop new seed varieties.

Questions Asked

At the June 25 and 26 meeting, Committee members expressed interest in additional information regarding the Experiment Station and Cooperative Extension Service. Pursuant to this interest, the Committee Chairman and Legislative Council staff asked North Dakota State University officials a number of questions on behalf of the Committee. The questions asked and the response from North Dakota State University officials are as follows:

1. What are the procedures utilized by the Experiment Station and the Cooperative Extension Service to ensure that all potential private and governmental research grants are evaluated and considered for application by the University?

Private and government research grants are primarily of concern to the Agricultural Experiment Station. Grants for the Cooperative Extension Service are primarily of a service nature. Consequently, the emphasis on this response will be from the point of view of the Agricultural Experiment Station activities. Obviously, one cannot aspire to ensure that all potential private and government research grants are evaluated and considered for application. However, the administrators and staff of the North Dakota Agricultural Experiment Station endeavor to maintain current knowledge of and interest in potential sources of grants which may appear applicable to the research needs, facilities, capabilities, and interests of the North Dakota Agricultural Experiment Station and the State of North Dakota.

Since World War II, agencies of the Federal Government have been the largest potential source of funds for research grants. Philanthropic foundations, private business, and private individuals also provide opportunities for grants. Generally, the potential grants are made known to the Agricultural Experiment Station staff by means of direct communications from the federal agencies; this occurs by weekly newsletter from the Cooperative State Research Service, by periodic letters and direct contact from the Agricultural Research Service, by circulation of invitations for grants by most of the other allied federal agencies, and by private reporting organizations, such as the Federal Research Report which is published twice monthly. In addition, the talents and capabilities of the North Dakota Agricultural Experiment Station are known to people throughout the world and, occasionally, direct contacts are made for research which may appear to fall within the capabilities of our staff and facilities. Notices of potential grants which arise from these types of sources are routinely shared with selected members of the staff and administration.

Research grants from private and philanthropic sources usually require a greater effort to learn in detail of their potential availability. Many of the larger institutions engage members of their staff for the sole purpose of seeking out, writing research proposals, and following through these types of activities. North Dakota State University has not committed itself to this

type of procedure. One of the primary reasons why we have not chosen this course of action is that we do not have the capability of a large number of staff members who have functional fluidity and can move from one project to another and draw with them a considerable number of staff and technical facilities. Perhaps appropriately stated, we don't have the depth of staff, the depth of financial resources, or the depth of physical facilities and highly specialized instrumentation to undertake this type of endeavor.

In the evaluation of grants which are known to us, one of the first criteria is to establish whether the grant is in support of the research interests of North Dakota or the potential research interests of North Dakota and whether the grant is a service grant or a research grant. Conceivably, a service grant could tie up both personnel and equipment in such a manner that the necessary on-going research in support of the crop, livestock, and economic program basic to our considerations at North Dakota Agricultural Experiment Station could be hindered if an inappropriate grant were accepted. Another question relative to service grants pertains to the use of the name of the university. We endeavor to avoid using the name of the university in product promotion. In the event that federal funds might be used to share expenses, product endorsement is prohibited.

In general, research grants which are deemed within our capability and within the general scope and objective of our research program are considered, evaluated, and implemented wherever feasible.

2. What are the procedures and controls in effect to assure that county agents and home extension agents are able to and do devote their time and effort to work of a priority nature in their counties or regions and that it is compatible and in accordance with the goals and policies of the main offices in Fargo?

Procedures and controls include written plans of work for a fiscal year which are prepared by the county staff members in collaboration with their supervisors and program planning committees. Each month, a progress report is submitted to the supervisor and a monthly effort statement is prepared for computer printout as part of a national program for the Cooperative Extension Service. Finally, annual reports of the county extension agent are prepared by each county agent and by each extension specialist. Extension staff plan about 70 per cent of their time for priority programs and activities during the year. Approximately 30 per cent of their time is not formally set forth in a written plan of work.

This would include vacation time and specific activities which will require only a few days or hours of time during the year. However, the unplanned time is reported in their monthly activity report.

Work priorities may change during the course of the year and these changes may be initiated on the basis of need. Training and information relative to new program areas is provided by contact with the district supervisor, district and semi-district meetings, and an annual meeting.

Because of the relatively large geographic area and the relatively large area of each of the 53 counties in North Dakota, it is difficult for three district supervisors to maintain a desirable and frequent contact with county agents for purposes of program leadership and coordination.

The Extension Task Force, which is currently studying goals, programs, and organization of the North Dakota Cooperative Extension Service, was recently presented data obtained from the 11 extension directors in the north central region. The data indicated that for purposes of administration, operation, program and staff development, an average of 22 per cent of the extension effort was spent by the states; they range from 30 per cent to eight per cent. North Dakota is investing seven per cent of its effort in these areas. This would suggest that on the basis of 1973 fiscal year, North Dakota was spending less effort on administration, operations, and supervision than other states in the north central region. While some people may look with pride at the low effort expended on administration, we must weigh this against the relative amount of supervision and coordination that is being afforded to the field staff in the State of North Dakota.

3. What is the relevance of each of the nine national goals of agricultural research and the 11 national goals for the Cooperative Extension Service to the needs of agriculture in North Dakota?

The goals, purposes, and scope of national agricultural research were defined in the mid 1960s by a joint task force composed of members of the Department of Agriculture, agricultural experiment stations, and laymen. These nine goals provide a basis for a research classification system which is used to measure research activity in the United States. Each of the cooperating agricultural experiment stations is charged with the responsibility of implementing those goals which appear pertinent to the individual state.

North Dakota has chosen to emphasize goals 1, 2, and 3, which are primarily associated with

ensuring a stable and productive agriculture, protecting crops and livestock from insect diseases and other hazards, and producing an adequate supply of farm products. Because North Dakota is said to be the most rural state in the Nation, we feel that research on agricultural production is of the greatest significance to our State. Consequently, we have placed the greatest emphasis on these three research problem areas. In a similar manner, we have placed correspondingly less emphasis on areas such as protection of consumer health and improving nutrition and well-being of American people and the area of expanding foreign markets and assisting developing nations. These areas have received very little of our research emphasis.

The 12 program elements for the Cooperative Extension Service, likewise, serve as guides for the individual state extension services. The emphasis placed on each varies from state to state. In the case of North Dakota, improving farm income, youth development, food and nutrition are the three major emphasis for work effort. In a similar manner, areas such as forest products, recreation, and wildlife, and international programs have received very little emphasis of extension effort in North Dakota.

4. How do the Experiment Station and the Cooperative Extension Service encourage outside advice in their efforts to discover and develop new crops and markets?

The sources of outside advice vary broadly but may be classified into categories of outside sources and inside sources.

Outside advice is encouraged and sought concerning new crops and markets from many public and private organizations and agencies and from innovative individuals within the agribusiness system. This is sought on the state, regional, and national level. Points of contact for North Dakota staff people are technical magazines, scientific meetings, advisory council meetings, national policy seminars, travel, observation and discussion. Whatever source may be used to communicate ideas, doubtless, is being used to some extent by individuals on the staff of North Dakota State University Agricultural Experiment Station and Cooperative Extension Service. In the State, there are a number of commodity groups which meet at regular intervals with the staff. In addition, selected staff members are participants on a number of state boards and committees who have the interest and responsibility to enhance the State's economic potential. New crops are frequently the focus of this type of input.

One cannot fail to include also as sources of information, the visits to the campus by in-

dividual farmers, agribusinessmen, scientists, both from the United States and foreign countries, who bring ideas or problems to the attention of members of the staff. Frequently from these types of contacts, further ideas are generated.

Another source of advice is derived from reading trade, technical and scientific journals, particularly those journals that have regional and worldwide crop information. In general, there is little opportunity for a scientist who works as an individual, either in a research laboratory or in an experimental field, to discover, develop, or create a new crop and new market for the economic betterment of North Dakota. This is a teamwork effort and broad horizons must be used wherever possible.

5. What is the Experiment Station's capability of solving problems requiring considerable research effort such as the saline "seep" or wild oats problem in North Dakota?

While an optimistic posture relative to the capability of solving problems is of great significance to any successful research program, it must also be brought into sharp focus that frequently solutions to problems may be expressed in terms of degree. Perhaps by increasing knowledge, understanding, and the state of the art, one can learn to live with a problem on his own terms. If this is a satisfactory solution, then we believe the Experiment Station, if given time and sufficient resources, can assist in solving the problems of the saline seep and wild oats. If eradication of wild oats is thought to be the only solution to the problem, then we believe there is no solution.

We believe that these types of problems can be investigated with a reasonable chance of success if the problem is adequately defined, if solutions are anticipated which are workable and are not thought to be miracle solutions created by research, if people are willing to change their ways of producing or change their habits in husbanding the land, and if the program is carefully pursued for several years of time before an evaluation of its relative success is made.

The wild oats problem is not peculiar to North Dakota. Many other areas of the world have it; they have lived with it for many centuries and it appears that there are many elements of knowledge currently known but not adequately applied in the field. Another facet of this problem, however, is related to the fact that in recent years, people developed the feeling that weeds could be controlled by agricultural chemicals and by developing the right chemical, the problem could be solved. However, in view of

the current climate in which environmentalists and agents are desirous of protecting public health and wildlife and are exhibiting considerable influence, one must be mindful that it is no longer possible to hope that agricultural chemical companies will invest research dollars with the hope of developing an agricultural chemical for relatively small areas of land or for crops which are considered to be minor crops with only limited use. We have been informed that it costs something of the order of \$15 million to develop a new agricultural chemical and to prepare it for registration and marketing. Because of this relatively high cost, many of the chemical manufacturers are exhibiting limited interest in the problems typical of North Dakota. Because of the general expense involved in registering chemicals for agricultural purposes, the outlook for miracle solutions by means of chemical applications appears to be quite dim. Possibly a solution to this problem may be in the biological area, and if this is the case, the solution will take many years. A more immediate effect may be gained by properly applying knowledge relative to good farm practices.

6. What new areas of Experiment Station and Cooperative Extension Service effort can be considered which would result in the enhancement of the rural way of life in North Dakota and improve the economic outlook for small farmers in North Dakota?

Certainly, if these questions are separated, they may take on a little different view than if they are melded together. In terms of improving the rural life of North Dakota, we believe that the rural life of North Dakota can be enhanced by enhancing the capability of North Dakota farmers, large, medium, or small, to produce agricultural commodities in an abundant and efficient manner in phase with the need for the commodities in the consumers' market. In this regard, the on-going program in plant science which assists in performing research for the two-thirds of the new wealth of North Dakota that is generated from the production of crops is essential. Likewise, the on-going research in animal science which provides approximately one-third of the new agricultural wealth in North Dakota is important. For only insofar as new wealth continues to be generated can the rural way of life be maintained or improved.

In terms of new areas for the production of new crops in North Dakota, the Agricultural Experiment Station and Cooperative Extension Service in concert have assisted in establishing an enlarged sugarbeet industry, both from the standpoint of sugarbeet production and from the standpoint of conversion of sugarbeets into the end product, sugar. Within the last five years,

considerable emphasis and realignment of responsibilities of personnel have occurred, both in the research and extension areas. The net effect is that we have a supporting agency for the sugarbeet industry in North Dakota that has considerably greater capabilities than we had five years ago.

In other searches for new crops, we have enhanced our capabilities and our ability to service new crops. These points have been elucidated in question 4.

In the area of improving the economic outlook of small farmers in North Dakota, work has progressed in two major areas. The Cooperative Extension Service has worked with small farmers to encourage them to produce new crops on smaller acres of land which require more labor-intensive type of farm production. Another approach in concert with the idea of labor-intensive work is to assist the small farmers in finding off-farm employment to assist in supplementing their income. The possibility of this is being explored cooperatively with the Employment Security Division in several counties in eastern North Dakota. A third phase of this type of activity is to assist wherever possible in encouraging a cottage industry development. The increased interest in ceramics, woodcarving, wrought iron metal work, and work by various types of artisans, which can be performed in the home or a home shop and which can provide a source of additional income, is being investigated and utilized wherever feasible.

One of the major challenges remaining when one considers the effort to improve the economic outlook for small farmers is associated with improving the attitude of small farmers. Motivation of the small farmer is one of the biggest challenges. Frequently, the solution to the problem of improving the economic outlook is available; occasionally, it merely involves applying existing knowledge or technology. However, there appear to be major inhibitors. The small farmer may believe the economic outlook is so discouraging or unknown that he will not seek or apply financial assistance either from private or public sources; he may not know what alternatives are available to him; he may believe he is too old to undertake new fields of endeavor; he may be too proud to accept advice; he may lack the desire to try, etc. These types of challenges are difficult to encounter and to solve. The economic outlook can be improved if people are willing to assist themselves. It is frequently very difficult for the research person or the extension person to stimulate and motivate people in the lower economic strata. Frequently, the person who should attend meetings by extension people is the person who does not attend these meetings.

Relationships with State Agencies

On January 10 and 11, 1974, the Committee heard reports from state agencies which maintain relationships with the Cooperative Extension Service and Experiment Station. Included in the list of departments making presentations were the Department of Business and Industrial Development, the State Water Commission, the Garrison Diversion Conservancy District, the Central Burleigh County Weather Modification Association, the State Wheat Commission, the State Soil Conservation Committee, the North Dakota Association of Soil Conservation Districts, and the Department of Agriculture. The services provided by North Dakota State University to these state agencies include economic and social impact studies relating to coal resource development, the preparation of the drought history of the State, a study of the seriousness of the saline seep problem in North Dakota, studies relating to the effect of added rainfall in North Dakota, serve as secretaries to soil conservation districts, and feasibility studies and special research projects.

Cooperative Extension Service Task Force Report

During the period of time that the Committee conducted its study, the Cooperative Extension Service Task Force completed its in-house review of the Cooperative Extension Service. One-half of the members of the Task Force were elected by the people within the Extension Service and one-half were appointed by North Dakota State University administration. In addition there were two persons invited from the public to serve on the Task Force; however, only one actively participated in the study. The Cooperative Extension Service Task Force reviewed all areas of Extension activity and made a number of recommendations for an improved Cooperative Extension program in the future. The Task Force recommendations are as follows:

1. Develop a definitive statement of organizational objectives that will provide the basis for determining program direction and priority in each major program area.
2. Develop a statement of program objectives in each major program area that will provide the basis for determining major program thrusts based on the immediate and long-range needs and interests of people as identified through input from extension staff, representatives of the potential clientele, and analysis of what is happening in the social, economic, and political areas of society.
3. Establish statewide advisory group to help set program emphasis and priorities.
4. Establish an overall advisory committee in each county to advise the staff on the

- program emphasis and priorities based on the input from the multitude of commodity groups, associations, councils, and individuals.
5. Develop a statewide program development process guide to include the philosophy, policy, objectives, organization, and procedure for program development in state, area, and county program units.
 6. Provide intensive training for all staff on the program development processes.
 7. Strengthen the day-to-day interchange and working relationships among Extension, teaching and research staff through regularly scheduled joint staff meetings, joint appointments, and/or a combination thereof.
 8. Establish major program thrusts in the major program areas.
 9. Shift programming efforts from an emphasis on activities to a predominant emphasis on major program thrusts directed toward specific goals or objectives.
 10. Make program result evaluation an integral part of all major program thrusts and plans.
 11. Develop and implement program thrusts through the multi-disciplinary (system) approach.
 12. Staff with area home economists to serve those counties not now served by an extension home economist.
 13. Eliminate the Assistant County Extension Agent position as a training position; convert these positions to county or area agricultural, 4-H, and/or home economist positions.
 14. Add specialist positions in the areas of: Veterinary Science, Agronomy, Animal Science, and Housing.
 15. Utilize joint appointments where the arrangement would be practical and beneficial to the mission of research and extension.
 16. Expand the use of para-professional program assistants in agriculture, home economics, and 4-H youth programs in those situations where their assistance would permit the professional staff to focus more effort on major educational thrusts.
 17. Eliminate title of County Chairman and substitute the title County Program Coordinator, and separate these responsibilities from the County Agent's job description.
 18. Expand the number of District Supervisors from three to six and assign geographic area responsibilities on the basis of the state planning regions.
 19. Change the title of the District Supervisor to Extension Area Director.
 20. Eliminate the Senior District Supervisor role and establish six Extension Area Directors who will each be directly responsible to the Associate Director.
 21. Eliminate the associate and assistant titles of professional county extension staff positions. Have all county extension staff report directly to the County Program Coordinator for day to day program matters and to the Extension Area Director for overall program, administrative, and personnel matters.
 22. Change the title of the Section Heads to Program Coordinators and delineate responsibilities commensurate with the title.
 23. Reassign the Agriculture and Community Development specialists to five program units: Animal Science, Plant Science, Natural Resources, Agricultural Engineering, and Agricultural Economics.
 24. Change the title of all associate and assistant State 4-H Leaders to 4-H, Youth Specialists.
 25. Change the title of the State Leader, Personnel and Program Development to Coordinator, Program and Staff Development, which would be consistent with assigned responsibilities.
 26. Extension Area Agents be directly responsible to the Extension Area Director for all program and administrative matters.
 27. Assign one of the 4-H Youth Specialists responsibility for program coordination in the 4-H, Youth Unit.
 28. Director of Extension should be a full-time position.
- The Director of the Cooperative Extension Service reported that the total new dollars needed for the implementation of the Task Force recommendations and the number of positions required are summarized as follows:

	Federal	State	County	Total
Area Directors (2)	\$	\$119,672	\$	\$119,672
Agronomists (2).....		79,862		79,862
Veterinarian (1).....		49,565		49,565
Livestock (1)		40,431		40,431
Area Home Economists (2).....		42,114	17,600	59,714
Housing (1)		44,559		44,559
Area Rural Development (3).....		122,293		122,293
Communications Specialist (1).....		48,559		48,559
Secretaries (4)		46,666		46,666
Fringes.....	34,271	6,399		40,670
Total.....	\$ 34,271	\$600,120	\$17,600	\$651,991

Arthur Andersen & Company Report

The performance review conducted by Arthur Andersen & Company included a section on agricultural research and extension. A summary of that section of the report and that firm's recommendations are as follows:

Agricultural Research and Extension

At present the Dean of the College of Agriculture also has direct responsibility for operations of the Agricultural Experiment Station. This organizational arrangement appears to operate effectively in that there is a close liaison between academic and experiment activities. In fact, many of the individuals assigned academic responsibilities within the College are concurrently involved with research activities.

The Cooperative Extension Service operates more independently than the research and academic disciplines. The Extension Service is directly responsible to the Vice President for Agriculture and, for the most part, is staffed independently from the College and Experiment Station.

We believe this organizational structure contributes to potential duplication as well as a lack of communication and interaction between the Extension Service and the other agricultural disciplines. Further analysis should be given to reorganizing and improving the integration of the agricultural functions at NDSU.

Other recommendations relating to the extension and research activities include:

Experiment Station

1. Reexamine the research goals currently used to evaluate the appropriateness and desirability of undertaking new projects. We believe the existing nine national goals are too general in nature.
2. Establish a project reporting system for the branch stations to assist in identifying branch station costs and activities with main station projects.
3. Improve the budgeting and reporting procedures to facilitate an accurate comparison of budget goals to actual performance and strengthen project control.
4. Further integrate the accounting and financial reporting systems maintained by the Experiment Station with the centralized system maintained by the University's business office. This integration should be directed at minimizing duplicate accounting records and procedures.
5. Review the policies and procedures presently followed for decentralized purchasing at branch stations.

Cooperative Extension Service

1. Improve the controls and supervision of the activities of county agents. This could be accomplished through regionalization, increasing the staffing level for district supervisors, or a combination of both alternatives.

2. Strengthen financial controls through increased involvement of department heads in the budgeting and reporting process.
3. Improve project reporting by integrating internal information requirements with those of the national extension reporting system.

County Commissioners

The President of the North Dakota County Commissioners Association appeared at the July 30 Committee meeting. He emphasized the need for additional funds to support the county share of the county extension and county home extension agent programs. He pointed out that the current one-mill levy authorized for the county agent and home extension agent programs is inadequate since the county's share presently costs about one and three-fourths mills on an average throughout the 53 counties in North Dakota. Even though an extra mill was authorized by the last Legislature, it does not seem to help much since it must be approved by a majority vote of the qualified voters in each county before it can be levied. He recommended that the Committee consider giving the county commissioners the statutory authority to increase the mill levy from one to two mills.

Consultation Board

Mr. Arden Burbidge, President of the Experiment Station and Extension Service Consultation Board, reported the activities of that board and its observations to the Committee on a regular basis during the biennium. It was emphasized that the Consultation Board is not a board to manage the Experiment Station and Cooperative Extension Service, but is a board to look at the goals and philosophy of the administration of those units. Board recommendations and observations include the following:

1. That agricultural research be considered separate from higher education and its capital construction needs.
2. That consideration be given to the development of an Experiment Station in the rangeland area.
3. That salaries be increased to the average in the north central region.
4. That there be a substantial expansion of the Cooperative Extension Service and Main Experiment Station appropriation.

At the last meeting of the Committee, Mr. Burbidge reported that as Chairman of the consultation Board, he has made the following conclusions regarding the Experiment Station and Cooperative Ex-

ension Service. He stated that the organizations are viable organizations and are getting the job done. He then said that in the future the following questions must be asked regarding the Cooperative Extension Service and the Main Experiment Station:

1. Are they viable organizations and getting the job done? At the present time he believes they have taken steps to regenerate themselves and are getting the job done.
2. Do the Cooperative Extension Service and Main Experiment Station see what the needs of the people of North Dakota are? He stated that he believes they are doing a better job than what he thought they were.
3. Do the Experiment Station and Cooperative Extension Service have enough vision for the future? He stressed the need for the development of an appropriate frame of mind so that events do not overtake them.

Board of Higher Education

The president of the Board of Higher Education, Mr. Harold Refling, made a report at the July 1974 Committee meeting. He reported that the Consultation Board has been of real service to the Board of Higher Education. He informed the Committee that the Board of Higher Education has reviewed both the Arthur Andersen & Company Operational Audit and the Cooperative Extension Service Task Force report. He advised that the board has authorized North Dakota State University to implement most of the recommendations contained within the Arthur Andersen & Company Operational Audit and the Cooperative Extension Service Task Force report. He advised that the board has authorized North Dakota State University to implement most of the recommendations contained within the Arthur Andersen & Company report which he described as a good operational audit, bringing out many things which the board perhaps should have been doing, and which when implemented will give the board greater control in the future. In regard to the Cooperative Extension Service Task Force report, President Refling said it is an excellent report, and that the board is going to do what it can to implement the recommendations.

Agriculture in North Dakota

At the last Committee meeting, North Dakota State University Vice President for Agriculture, Dr. Kenneth Gilles, presented information regarding the role of agriculture in North Dakota, its position in relation to other states, and the investment made by North Dakotans in Cooperative Extension and Experiment Station activities.

He reported that North Dakota has 41 million acres of land area with 27 million of those acres tillable, 13 million acres available for grazing, and 1 million acres of wetlands. In regard to agricultural production, North Dakota ranks number one in the production of durum, hard red spring wheat, flax, barley, and sunflowers; number two in rye and all wheat; third, in oats; fourth, in sweet clover seed; fifth, in potatoes; and sixth, in dry beans and all crops. In 1973, North Dakota ranked number three in the Nation in cropland area, number nine in crop value, number 10 in cash receipts from crops, number 18 in cash receipts from crop and livestock, number 31 in cash receipts from all livestock, number 28 in milk cows, number 30 in dollars for agricultural research, and number 35 in dollars for Cooperative Extension Service.

In regard to new wealth in North Dakota, of the \$2,388,000,000 of new wealth in 1973, 85 percent came from agriculture. This was an increase from \$1,060,000,000 in 1971 when the total new wealth in North Dakota was \$1,488,000,000. The total new wealth in North Dakota in 1973 was \$2,799,000,000. The Vice President for Agriculture stated that the greatest need in the next budget for the Cooperative Extension Service and Main Experiment Station is funds for adequate salaries. He reported that for the 1973-74 school year, the average salaries for North Dakota State University personnel ranked significantly below the north central average. Department chairmen ranked 22 percent below, professors ranked 18 percent below, associate professors ranked 10 percent below, assistant professors four percent below, instructors nine percent below, Cooperative Extension Service agents and area agents ranked 15 percent below, and Extension Service personnel ranked nine percent below. For the 1974-75 school year the north central average for salary increases was 6.7, while North Dakota ranked the lowest with a four percent increase. Facilities recommended by the Vice President for Agriculture for legislative consideration included an agricultural science building on the North Dakota State University campus at a total cost of \$4.7 million. The total facility program for the 1975-77 biennium for the Experiment Station amounts to \$5.6 million.

Committee Observations

At the last meeting, Committee members expressed observations and suggestions which they had developed during the course of the study of the Cooperative Extension Service and Experiment Station. Pursuant to a motion, the following observations, suggestions, and comments are included in this report:

Due to the importance of agricultural wealth in the economy of North Dakota, it is hoped that the Forty-fourth Legislative Assembly will con-

tinue to substantial level of funding to the Cooperative Extension Service and the Experiment Stations commensurate with the needs of agriculture in North Dakota.

It is important that the Cooperative Extension Service and the Experiment Stations continue to place priority on the importance of continually reviewing the work that they are doing, assuring themselves that the work is responsive to the needs of agriculture, and change when improved and more efficient ways of delivering service are desirable.

It is important that the Experiment Station judge research programs on the basis of the return of investment to the citizens of North Dakota, and that people involved in research need to continue to be knowledgeable and cognizant of cost factors while conducting research projects.

Emphasis should be placed upon communications with those utilizing the services of the Cooperative Extension Service and Main Experiment Station; this includes the general public, those utilizing directly the services of those units, the North Dakota Legislative Assembly, and the 53 counties of the State.

The Committee by motion expressed its support to the Consultation Board's recommendation that facilities for the Experiment Station and Cooperative Extension Service should be included in the budget requests for such units and not included in the higher education priority list for college buildings.

JUNIOR COLLEGE REVENUE BONDS

A report on revenue bond issues at junior colleges was prepared by the staff of the Legislative Council for Committee consideration. A copy of the report is available and on file in the Legislative Council office. The report indicates that as of June 30, 1973, a total of \$4,157,000 in revenue bonds had been issued by the junior colleges under the provisions of Chapter 15-55 of the North Dakota Century Code. The amount of bonds issued includes \$1.8 million for Bismarck Junior College and \$2.3 million for Lake Region Junior College. Planned projects for the UND-Williston Center for which revenue bonds will be issued include the construction of a student center addition to its main building at an estimated cost of \$366,000, and the purchase of existing dormitory facilities from the Williston Center University foundation at an estimated cost of \$250,000. Section 15-55-18 of the North Dakota Century Code limits the amount of revenue bonds which can be issued by a school district for construction or purchase of junior college facilities to \$2.5 million.

According to the report, as of June 30, 1973, the construction costs for junior college revenue bond facilities amounted to \$4,304,502, which exceeded the bond proceeds of \$4,185,653 by the amount of \$118,849. Surplus funds in the amount of \$283,849, in addition to bond proceeds, were used to cover construction costs for Bismarck Junior College revenue bond facilities. Lake Region Junior College revenue bond proceeds were \$165,000 greater than the construction costs. The excess funds reported for Lake Region were used to pay interim financing costs and accrued interest. During the review, the Committee expressed concern about one instance where reserve funds had not been set aside in the fund designated in the bond indenture. To preclude the issuance of bonds in amounts greater than the costs of construction, the Committee recommends a bill providing that bond issues cannot be greater than the cost of facilities to be constructed from the proceeds of the revenue bond issue.

The percentage of occupancy in dormitory facilities at the junior colleges was reported at 98.1 percent at Bismarck Junior College and 92 percent at Lake Region Junior College. Enrollments for the fall of 1973 were at 1,316 for Bismarck Junior College, 596 for Lake Region Junior College, and 540 for UND-Williston Center. Representatives of the junior colleges in making presentations to the Committee did not indicate a need to consider increasing the \$2.5 million statutory limit on revenue bond issues at the junior colleges. None of the junior colleges expressed a need in the near future for the construction of additional student housing.

REVIEW OF ACCOUNTING AND REPORTING SYSTEMS

At the July 30, 1974, meeting, Mr. Dale Moug, Executive Budget Analyst, indicated that the Department of Accounts and Purchases had contracted with Arthur Andersen & Company to conduct a study of the State's accounting system. He pointed out that the accounting system needs revision to accommodate program budgeting and to provide better accounting information for improved management of State Government. It was reported that program budgeting and reporting includes the following three stages:

1. **Cost reporting** — Cost reporting by program provides helpful information regarding the purpose or programs for which expenditures are made. This requires the minimum level of effort while still providing benefits for program analysis purposes. To accomplish this, state departments must define their program structure, identify program responsibilities, design systems to report back actual program costs, and train personnel in the operation and use of the system.

2. **Performance reporting** — The scope of the system may be expanded from collecting and reporting costs to reporting measures of performance so that the effectiveness and efficiency of expenditures may be measured and reported. Establishing meaningful measures of performance is an extremely difficult task. Even if it is accomplished, program budgeting may still be merely an information system. That is to say, it is not truly used to manage.
3. **Program appropriations** — The ultimate test is for the Legislature to appropriate by program. Many states claim to have program budgeting. What they often mean is that they provide the Legislature with program information. Their Legislature still appropriates by line item. The inherent danger here is for a Legislature to appropriate by line item within a program. This would tend to limit a department's flexibility, e.g., salaries and wages would be appropriate to each program within a department.

In addition to program accounting, they proposed a system having the capacity to provide organizational reporting. Organizational reporting is directed at achieving a system for planning and reporting of all expenditures and revenues to responsible individuals at all levels of State Government who are in a position to exercise the most direct control over them. The fundamentals of organizational reporting include the following:

1. **Individuals in the organization are made responsible and held accountable for expenditure or revenue performance.** This involves assigning the responsibility for controlling individual items for expenditure or revenue to a specific person — a key person who can actually take action.

Thus, organization reporting is an action-oriented control system. This assignment of responsibility usually involves some clarification as to who is responsible for what activity. The installation of a responsibility reporting system provides an opportunity for a review of the organization structure of the department and a delineation of operating and reporting responsibilities.

The organization reporting system charges each supervisor only with those expenditures and revenues which he can directly control. It pinpoints responsibility for all controllable items by individual and integrates the standard expenditure reporting with the department's budgetary controls. Reports are prepared for all levels of management from the operating supervisor to the director of the department.

2. **The development of a department plan that provides meaningful measures of performance.** Planning begins with the definition, by the department, of its goals and objectives. These goals and objectives are communicated to the personnel responsible for preparing plans for their respective areas.

The actual preparation of the budget involves the participation of each key person. If the budget were prepared without their assistance, that individual could consider it unrealistic and unworkable. The computer can be used in many areas of the budgeting process so that the budget preparation, compilation of data and review, is greatly simplified and speeded up.

3. **Performance is reported to specific individuals who exercise control over disbursements or revenues.** Actual results should be reported in terms of the person responsible for controlling the disbursement or revenue. The comparison must be on a formalized basis in order to assist both the front line supervisor in identifying problem areas, and other levels of management in the follow-up of operating exceptions.

The Arthur Andersen & Company recommendations to the Department of Accounts and Purchases included the following:

1. Revise and simplify the coding structure so that it can provide input to organizational and program reporting as well as expenditure control and project reporting.
2. Incorporate organizational and program reporting that will roll costs up through the various levels of the State's organizational and program structures.
3. Install program reporting that is not limited to a specific number of levels in the program structure.
4. Revise the system to provide the capability to record encumbrances.
5. Incorporate a vendor master file in the warrant payments system.
6. Provide for balance sheet reporting for each fund.
7. Improve and simplify fund control procedures.

The Committee by motion encouraged the Department of Accounts and Purchases to proceed with the accounting and reporting system recommended by Arthur Andersen & Company. A status

report on the system is planned during the December meeting of the Budget Section.

PRE-PLANNING FUND

At the July 30, 1974, meeting of the Committee, a report was presented indicating practices in surrounding states regarding pre-planning for major capital construction projects. Information pertaining to the States of Iowa, Maryland, Michigan, Minnesota, Montana, South Dakota, and Wisconsin was presented to the Committee. In most of these states, funds are available through either a revolving fund or a capital improvements budget for pre-planning of major construction projects. In addition, it was found that most of these states involve the legislative branch of government in the planning process.

The Committee was encouraged by the State Superintendent of Construction to recommend legislation calling for capital construction pre-planning procedures in North Dakota. He recommended to the Committee that the Legislature provide moneys to departments for pre-planning for construction projects. He indicated that it would be beneficial to the State to release planning funds for the preparation of plans, prior to a legislative appropriation for the construction of a project, indicating the type of facility, space planning and utilization analysis, estimated cost of project, and other information which might be helpful in determining the need and cost of the proposed facility. He suggested that the Budget Section of the Legislative Council be involved in the review of requests for moneys from a pre-planning fund.

Mr. Robert Ritterbush, President-Elect of the North Dakota Chapter of American Institute of Architects, expressed support for legislation calling for the establishment of a fund to finance pre-planning of major capital construction projects. He suggested that moneys from the fund be limited to amounts necessary for preliminary plans. In his opinion, the amounts necessary for this in terms of a construction project would be about one percent of construction costs. He pointed out that the schematic design phase includes the development of preliminary plans or working drawings, the determination of square footage, basic design, building style, and cost estimates.

The Committee recommends a bill calling for the establishment of a revolving fund for the pre-payment of consulting and planning fees for capital improvement. The bill provides that the funds shall be made available to state agencies from a preliminary planning fund under the control of the Director of the Department of Accounts and Purchases for schematic designs, and cost estimates

relating to proposed new capital improvements or major remodeling of existing facilities. The state agencies obtaining planning money would return such money to the planning fund at the time that the construction project is funded by the Legislature.

Prior to the release of planning funds for the project, approval would be required from the Budget Section of the Legislative Council. The Committee recommends a \$200,000 appropriation for the establishment of the preliminary planning fund.

BUDGET "C"

The Legislative Council was assigned a management study of the North Dakota State Mill and Elevator Association pursuant to Senate Bill No. 2013 passed by the Forty-third Legislative Assembly. In addition to the North Dakota State Mill and Elevator Association review, the Legislative Council designated the Committee to conduct performance reviews of such state agencies and institutions as it might select. Appointed to the Committee were Representatives Robert Reimers, Chairman, Earl Bassingthwaite, Paul Bridston, Ralph Christensen, Robert Hartl, Byron Langley, Lawrence Marsden, and Oscar Solberg; Senators George Longmire, Lawrence Naaden, Jack Page, Ernest G. Pyle, and Claire Sandness.

The report of the Committee on Budget "C" was submitted to the Legislative Council at the biennial meeting of the Council held at Bismarck. The report was adopted for submission to the Forty-fourth Legislative Assembly by the Legislative Council in November 1974.

PERFORMANCE REVIEWS

Senate Bill No. 2013 appropriated \$30,000 to the Legislative Council for the purpose of procuring an experienced and well-qualified independent management services firm with the technical and professional capabilities necessary to conduct a study of the operations, management, accounting systems, and programs of the North Dakota State Mill and Elevator Association. North Dakota State University and the North Dakota State Park Service were also selected by the Committee for performance reviews. North Dakota State University was selected for a performance review (operational audit) of its administrative practices since Budget Committee "B" had already been designated to undertake a study of the North Dakota State University Cooperative Extension Service and Experiment Stations. The findings and recommendations of the review of the Cooperative Extension Service and the Experiment Stations are presented in the report of the committee on Budget "B". The Committee also selected the North Dakota State Park Service for a performance evaluation since fiscal audits completed by the State Auditor's office indicated the need for a management study of the service.

At its July 18, 1973, meeting, the Committee interviewed a number of firms with expertise in management services who had expressed a desire to assist the Committee in its various studies. The following firms were selected to conduct the three performance reviews: North Dakota State Mill and Elevator Association — Peat, Marwick, Mitchell

and Company, a national accounting firm, and Experience, Incorporated, a professional management services firm, Minneapolis, Minnesota; North Dakota State University — Arthur Andersen and Company, a national accounting firm, Minneapolis, Minnesota; North Dakota Park Service — Stanley B. Hall, Certified Public Accountant, Grand Forks, North Dakota.

The firms began their reviews in August 1973, reporting periodically to the Committee on the progress and direction of their studies. At the September 27, 1973, and January 10, 1974, meetings, the Committee reviewed preliminary reports prepared by the consulting firms. At these meetings, Committee members asked for further analyses and information regarding points contained in the reports. At the March 21, 1974 meeting, the Committee by motion accepted the completed reports of the three performance reviews. The objectives, major findings, and recommendations of the performance reviews are presented in the following excerpts from the completed reports which are on file and available in the Legislative Council office.

NORTH DAKOTA STATE MILL AND ELEVATOR ASSOCIATION PURPOSE AND OBJECTIVES OF STUDY

The purpose of this study was to review the performance of the mill operations and to ensure that the associated programs address the various managerial and operational needs. To reach the overall goal of the study these objectives were developed:

1. An evaluation of the procurement, production, and marketing of the flour and feed mills;
2. An evaluation of the administrative, accounting, nonproduction, and financial management programs of the flour and feed mills; and
3. An evaluation of the organizational structure and of the results of the financial analysis.

GRAIN PROCUREMENT AND TERMINAL OPERATIONS

With low grain price supports and low grain loan rates, Commodity Credit Corporation is not likely to add to its present inventory position. Indeed, it will probably reduce operations still further and not be a source of grain for storage. With little likelihood of CCC storage and with reduced mill inventory, the

prospects are that 80 percent of the terminal will be available for operations outside the responsibility of supplying the mill.

There are alternative uses for this elevator space. It could be utilized in a grain merchandising operation organized and conducted by the present department or it could be leased to other organizations in the same business. The space utilized would be up to four million bushels in the Terminal Elevator. Present terminal elevator labor would probably be sufficient to handle increased grain merchandising volume, but office personnel would be increased by at least two men.

The Commodity Exchange Administration is recommending an increasing number of points of delivery on futures markets. Chicago has already added points to its list. Minneapolis may be in a similar position. The North Dakota terminal is an ideal point for futures delivery of both spring wheat and durum wheat as well as oats. The possibility of allowing Grand Forks grain to be delivered on Minneapolis futures contracts depends upon mutual negotiations and Commodity Exchange Administration approval. Such deliveries would add substantial revenue from storage and handling and

depend entirely on the volume in much the same way CCC grain revenue was earned.

FLOUR MILL

The mills are well engineered and show good planning in the design and choice of most of the equipment by the mill management and the engineering consultant. The clean wheat yield could be improved slightly, subject to uncertainty of the present weights. The biggest improvement, however, can be made in the semolina percentage, which is lower than competitive mills. When the purifiers function as they should, semolina percentages should increase at least 5 to 6 percent. Since semolina commands a premium of at least 30 cents per cwt., it is essential to obtain as high a percentage as possible for profitable operation.

The number of plant employees seemed high except for the laboratory, which was low. Since most of the durum is shipped in bulk and 70 percent of the total output is durum, the number of men in the plant is higher than industry averages. This may be due, in part, to the high percentage of bread flour that is sacked. Since administrative and selling costs are low, the total conversion cost is in line with other mills of comparable size.

FINANCIAL ANALYSIS

The flour mill, feed mill, terminal and local elevators have invested capital that totals \$12,482,063, consisting of over \$6 million net fixed assets and \$6.4 million net current assets or working capital. Five years' earnings as taken from the audit report are as follows:

Year ended 6/30	1969	1970	1971	1972	1973
Flour Mill Dept.	\$544,583	\$472,680	\$366,381	\$261,793	\$1,703,605
Terminal Dept.....	196,152	459,922	277,459	218,475	(146,375)
Feed Dept.	777	26,061	13,757	13,039	87,805
Local Elevators	<u>48,943</u>	<u>57,358</u>	<u>35,332</u>	<u>16,340</u>	<u>88,734</u>
Net Income (Before extraordinary gains & losses)	\$790,455	\$1,016,021	\$692,929	\$509,647	\$1,733,769

Net sales for all operations totaled \$23,540,064 in fiscal 1973.

It is unique for a state to operate such a flour and feed mill. State ownership provides several financial advantages that result in estimated savings such as local real estate taxes, \$20,000; state sales taxes on supplies, \$5,000; Garrison Dam electric power through a power cooperative, \$75,000; North Dakota state income tax, \$70,000; and federal income tax, \$800,000, totaling \$970,000.

The review of the feed mill included an analysis of its cash contribution to the overall mill operation.

The feed mill consistently has made a contribution and created a positive cash flow, although at times a small amount. Operating income from a private business would have to approach \$2.2 million per year before the amount of the North Dakota income tax receipts from the company would equal the cash contribution of the feed mill to mill operations. Based on the shrinking demand for feed mill products, private industry could not generate the necessary sales and profits to give the same cash flow to the State of North Dakota; however, in response to some Committee members' concerns regarding the appreciable contribution made by the feed mill to the general operations of the North

Dakota Mill and Elevator Association, the consulting firm of Peat, Marwick, Mitchell and Company stated that in its opinion the discontinuance of the feed mill division would not have a major impact on the overall operation of the North Dakota Mill and Elevator Association.

FLOUR SALES AND MARKETING

The sales area for the North Dakota mill is limited to the central, southern and eastern markets. North Dakota spring wheat flour cannot compete with flour milled in the inter-mountain and western states which utilize local wheat available at lower prices. About 40 percent of the spring wheat flour is sold and shipped east and south of Chicago and the remainder to Chicago and nearby central states including North Dakota, Minnesota, Wisconsin, and Iowa. About 80 percent of the spring wheat flour sold goes out in sacks and 20 percent in bulk, about the reverse of the durum flour and semolina.

Sales managers should continue to concentrate on sales to nearby destinations in the central states and other areas where freight is advantageous. Volume in these areas should be increased when prices are competitive.

FINANCIAL MANAGEMENT AND ORGANIZATION

Cash velocity, inventory turnover, fixed asset turnover, and total asset turnover are well below the industry average.

The low cash velocity is due to lack of adequate cash management. In preliminary discussions with legislative representatives and mill management, the consideration of a lock-box system for the cash receipts function was recommended. An evaluation of a lock-box system was conducted by an independent firm, Phoenix-Hecht Cash Management Services, Inc., of Chicago. Its report recommends a two lock-box system with one box to be in St. Paul, Minnesota, and the other in Newark, New Jersey. Phoenix-Hecht estimated that a lock-box system would save approximately \$24,000 a year, given an opportunity cost of nine percent.

The low grain inventory turnover likely is attributable to the fact that the mill is not in the grain merchandising business and cannot hedge durum. Most grain and milling companies deal more substantially in spring and winter wheat as well as in merchandising.

The low turnover ratios for fixed and total assets are attributed to the recent rebuilding of the mill.

The budget request submitted to the State Legislature has the following shortcomings:

1. A fixed-dollar allocation with an "emergency fund" does not provide the flexibility necessary in an industrial concern. With a fixed-dollar budget, the mill and elevator cannot operate effectively in a period of rising price levels. In addition, a fixed budget does not allow for fluctuating sales volume.

(For example, the current year's budget was drawn on a five-day basis and the mill is operating seven days. This involves additional payroll, power, etc.)

2. The format does not reflect the budgeted costs of operations, margins, extraordinary income items, etc., where major management emphasis should be placed.

Management should request that the Legislature change its present budgeting procedures for the mill and elevator. A more meaningful budgeting tool for the Legislature would be a two-year operating and capital budget, prepared in 24 monthly increments. This format would permit legislative review, while providing management with the monthly control necessary for regular review. In addition, the budget should be "flexible" within approved boundaries; that is, vary with changes in conditions, sales volumes, and price levels.

A review of the organizational structure and necessary working relationships of the various functions of the operations has led us to the following findings and conclusions:

1. The present organizational relationships are excessively complex. Currently, too many employees report to the general manager and the assistant general manager.
2. There are many informal working relationships between top and middle management individuals.
3. Position descriptions for management personnel are neither complete nor current.
4. No program exists for the development or maintenance of management skills.

CONCLUSIONS AND SUMMARY OF RECOMMENDATIONS

It is the opinion of Experience, Incorporated, and Peat, Marwick, Mitchell & Co. that the Mill and Elevator Association is, on the whole, well managed. Further, the findings indicated that the operation is profitable to the State of North Dakota. However, to sustain the growth pattern already established and improve the profitability, some improvements can be made. The key items to which specific attention should be given are:

1. The grain department should expand its grain merchandising operations to utilize the major part of the terminal elevator or lease it to an outside merchandiser-exporter.
2. While the mill is being operated on a reasonably efficient 24-hour day basis, several changes should be made to increase yields:
 - a. Improve the operation of feeder scale equipment to measure yields more accurately.
 - b. Improve the tempering process.
 - c. Adjust the purifiers to improve semolina yield.
 - d. Increase the mill capacity to utilize the present purifier and sifter capacity.
3. The mill efficiency can be improved by:
 - a. The reorganization of work scheduling.
 - b. The addition of a chemist in the laboratory to assist in preplanning selection of the best wheats in the area, in conducting control tests during production, and in keeping up with current developments.
 - c. The installation of a Ro-tap sifter in the laboratory to check semolina granulation critical to product quality.
4. The operating costs per cwt. for the mill and elevator are slightly below the trade association's average for mills of similar size.
 Based upon the present costs of providing power, heat, and light (as compared with the industry average costs), additional economies may be obtained through a review of the complex's heating requirements and available sources of power. An engineering study should be made regarding operating efficiency and related costs.
5. The flour marketing strategy should be reviewed to ensure that the sales objectives are being achieved.
6. The feed mill operations have been profitable over the past few years; however, this is a shrinking market. A feed mill marketing program should be developed.
7. The existing mill and elevator safety program is effective. However, to maintain a low accident rate and low insurance premiums a formal safety program should be documented.
8. The existing planning and budgeting process is not a meaningful tool to management. This process should be revamped to address management operating needs.
9. Improvements in processing efficiency and timely preparation of management information can be realized in the accounting and administrative systems. This will involve an extensive review of current and projected management information needs, including revisions in data processing capabilities.
10. Management of cash should be improved to minimize interest expense and maximize short-term investment income.
11. Certain deficiencies exist in the organization of work at the mill. Because the general manager has complete responsibility and a broad span of control, his prolonged absence would cause major disruption in the work flow and function of the mill. The number of employees who report directly to the general manager should be reduced so that greater emphasis is placed on delegation of authority to responsibility centers. As a result, the general manager should be free to devote himself to the overall supervision of the mill activities.

As a means of suggesting priorities to these recommendations, the approximate contribution (additional revenue or cost reductions) associated with the recommendations, where appropriate, has been estimated. These amounts are presented below:

**APPROXIMATE CONTRIBUTIONS — ADDITIONAL
REVENUE OR COST REDUCTIONS**

Source of Additional Revenue/Cost Reductions	Estimated Annual Revenue/ Cost Reductions
Handling charges as the result of increased purchases directly from the country elevators should create an additional revenue of:	\$ 25,000
A grain merchandising program would generate additional revenue (net after additional expense) assuming a 10 million bushel turnover, of approximately:	100,000
Multiple car rates resulting from grain rate reduction in and out of Grand Forks could result in a cost saving of (10 percent less than single car rates):	50,000
Grand Forks terminal grain, if deliverable on Minneapolis Grain Futures market, could result in additional net revenue of:	50,000
Improving semolina extraction by adjusting the purifier should result in cost savings of:	50,000
Customers' destination freight payments could reduce working capital by approximately \$150,000. The opportunity from such a reduction, assuming a 9 percent interest rate, would be:	13,500
Elimination of excess average daily balances in the general account (\$550,000 @ 9 percent) could result in a potential savings of:	49,500
Elimination of excess balances in the payroll account (\$40,000 @ 9 percent) could result in a potential savings of:	3,600
The establishment of a lock-box system for cash receipts could result in additional cost savings of:	24,000

**NORTH DAKOTA STATE UNIVERSITY
PURPOSE AND OBJECTIVES OF STUDY**

The purpose of this study was to conduct an operational audit of the administrative practices of North Dakota State University.

The following objectives were established:

1. Evaluate overall organizational structure.
2. Analyze academic and business planning.
3. Evaluate adequacy of financial management.
4. Evaluate resource utilization and controls.
5. Determine requirements for implementation.

ORGANIZATION

In general, the organizational structure of ND-SU is similar to that of colleges and universities of comparable size and reasonably reflects its actual operating practices. Several organization improvements should be made, however, to strengthen overall management control over University operations. These include:

1. Definition of more detailed organizational arrangements, particularly at the college and departmental levels.
2. Expand the existing policy to improve communication of administrative policies,

responsibilities and organizational authorities among administrative personnel.

3. Establishment of a position to coordinate and assist in implementing the administrative planning efforts being conducted throughout the University.
4. Improve the distribution of administrative responsibilities among top-level management. Particular attention should be directed at reducing the number of positions reporting to the President and Vice President for Academic Affairs.
5. Improve internal auditing capabilities.

FINANCIAL MANAGEMENT

Significant improvements can be made in the financial reporting and control functions within the University. The recommendations relating to financial management are arranged under three major sub-topics relating to: (1) financial reporting; (2) accounting; and (3) budgeting.

Financial Reporting

Financial reporting problems include:

1. Reporting is detail-oriented and does not facilitate high-level management review.
2. Reporting should be available to users on a more timely basis.
3. Accounting procedures may temporarily distort financial figures.
4. Reporting does not relate actual expenditures to budgeted amounts for those departments which operate from internally generated revenues and grants.
5. Complexities in the account coding structure and mechanized system design cause excessive manual intervention and reconciliation at the time when financial statements are prepared. As a result, financial statements are only prepared on an annual basis.

Accounting

Central controls over business transactions, accounting, and financial reporting of the University should be improved. Present weaknesses include:

1. Purchasing procedures do not consistently conform to policies, thus weakening controls over the purchasing function.
2. Accounts receivable records are maintained on a decentralized basis and in many cases are not reflected in financial reports. Recent efforts have been made to centralize and mechanize these functions.

3. Physical and financial controls over items of plant and equipment require improvement. Present procedures have caused discrepancies between financial reports and more detailed property records. Consideration should be given to raising the minimum value for capitalization of assets.

Budgeting

The University budgeting process could be improved through internal revisions as well as modification to procedures outside their control. Specific requirements for change include:

1. The use of the present formula in projecting expenditure levels based on student enrollments may cause inequities in the determination of administrative spending requirements.
2. A level-by-level budgeting procedure is not consistently practiced. As a result, personnel having spending authority do not always participate in developing their financial plans.
3. The practice of appropriating institutional collections to the University in total produces complex internal accounting requirements and weakens legislative control over their expenditures.

DATA PROCESSING

Significant improvements can be made in the internal data processing capabilities of the University. Present weaknesses in the organization, planning, and controls over data processing functions have contributed to inadequacies of existing administrative information systems. These recommendations are of particular importance in view of the significance of data processing for both administrative and academic activities of the University. Recommendations for improvement include:

1. The Data Processing unit in the business office should be merged into the computer center.
2. Within the computer center, responsibilities of the production control and operations units should be combined to improve scheduling and monitoring of the computer.
3. System design and development capabilities of the computer center are weak. Staffing should be increased through the addition of system analysts.
4. A formalized data processing plan should be developed to establish data processing objectives and priorities and to ensure that the information needs of users can be met on a timely basis at reasonable costs.

5. Improved coordination is required in system development efforts within the University as well as with other colleges and universities in the State to avoid duplication of effort and costs.
6. Uniform standards and practices should be established to improve control over system development projects, systems, and program documentation and responsiveness to user requests for additional services.

RECOMMENDED APPROACH TO IMPLEMENTATION

Implementation of all of the recommendations contained in this report will require the commitment of substantial time and resources. Some recommendations, such as that to revise the method of appropriating funds, will require the passage of legislation and, quite likely, future study. Recommendations relating to organizational revisions will require internal evaluation, policy decisions and possibly hiring decisions on the part of University administration. However, some implementation of the principal recommendations have been accomplished and others can be initiated immediately by the University.

To oversee the implementation, it is suggested that the University establish a steering committee consisting of six to eight top administrators. This committee would be responsible to monitor and evaluate progress, provide direction to the implementation efforts, review and approve results, and consider major policy decisions. The steering committee should also have responsibility to appoint task forces as required to carry out the implementation efforts.

The estimated initial cost of implementing the recommendations would be \$85,000-\$100,000. Thereafter, the recurring annual costs would be \$14,000-\$17,000. A detailed analysis of these costs are presented in the complete operational audit report on file and available in the Legislative Council office.

NORTH DAKOTA STATE PARK SERVICE

The examination of the Park Service included a study of the organizational structure, lines of authority, personnel utilization, equipment usage and inventory control, as well as the Service's accounting, budgeting, cost accounting, financial reporting, and internal control.

A review was made of the Park Service's compliance with its statutory duties and responsibilities, including its compliance with legislative intent. No instances was observed where the Park Service was not in compliance with its statutory duties and responsibilities as manifested therein.

Recommendations for improved operations of the North Dakota State Park Service include the following:

1. Park planning should be formalized and documented.
2. Estimated costs of facilities should be updated to reflect current inflationary cost factors.
3. Long-term goals should be broken down into short-term, readily identifiable objectives.
4. Objectives should be assigned a targeted completion date and a projected cost figure.
5. Priorities should be assigned to all projects under consideration.
6. Program responsibility should be assigned in writing.
7. An assistant director with specific responsibility for research and planning should be appointed.
8. The Park Service organization chart should be revised.
9. The authority of the senior ranger at Fort Lincoln State Park over other park rangers should be eliminated.
10. Information on park budgetary appropriations controls should be reported periodically to the director and used as one basis for judging performance.
11. The accounting system should be expanded to a double entry ledger, including a job order cost system.
12. The Park Service manual should include descriptions of policy with respect to usage of Park Service properties along with prescribed penalties for violation of these policies.
13. Adequate procedural controls over State Outdoor Recreation Agency (SORA) projects need to be established to ensure that costs are not incurred without approval.
14. The budgetary process should include steps to ensure maximum utilization of available matching Bureau of Outdoor Recreation (BOR) funds.
15. Management should review visitation trends and cost trends to improve the performance at most parks.

AGENCY, INSTITUTION, AND ENTERPRISE RESPONSE

At each Committee meeting where the Committee reviewed the progress of the performance

evaluations, representatives from the state operations being reviewed were given an opportunity to respond to the recommendations contained within the reports.

Management representatives of the North Dakota Mill and Elevator Association stated that the report resulting from the management study conducted by Experience, Inc., and Peat, Marwick, Mitchell and Company will benefit the management of the North Dakota Mill and Elevator Association. North Dakota State University officials emphasized that a complete thorough institutional review of NDSU would require much more of a study than that conducted by the Arthur Andersen firm. Some of the positions recommended by Arthur Andersen & Company would be welcome at the institution, they said, but the University may have other positions which it believes would be more important than those recommended by the firm. In regard to the recommendations relating to data processing the officials from NDSU asked that the recommendations be considered by committees made up of representatives of the various institutions under the supervision of the Board of Higher Education since some of the recommendations have implications at other institutions. In regard to the recommendations calling for change in the present method of financial reporting and control, the NDSU representatives said the present system could be designed to improve financial reporting to top management. In regard to changes called for in the reporting and control of the plant and equipment items, action has been taken to correct problems that arose during the time of the review, they reported.

The Committee asked the Board of Higher Education to review the Arthur Andersen & Company report and comment on action it plans to take regarding recommendations contained within the report. The President of the Board of Higher Education reported that "...the Board has reviewed the report and has authorized North Dakota State University to implement most of the recommendations contained within it. The Arthur Andersen & Company operational audit report is a good report; it brings out many things which the Board perhaps should have been doing and it will give us greater control in the future. We plan to implement the recommendations calling for improved internal control." He also suggested that the Legislature conduct a followup review to determine North Dakota State University's progress in implementing the recommendations contained within the Arthur Andersen & Company operational audit.

The Superintendent of the State Park Service, said that progress has been made in improving the State Park Service program. He emphasized that the Service has begun to implement a sound planning program and that much has been accomplished since the period of time during which the performance review was made.

The Committee has requested that those agencies which were studied by the Committee during the current interim report at the December meeting of the Budget Section regarding action which they have taken pursuant to report recommendations. The Committee accepted all of the performance reviews as submitted by the consultants.

CENTRAL PERSONNEL DIVISION ADVISORY STEERING COMMITTEE

The Central Personnel Division Advisory Steering Committee was created as a joint legislative executive steering committee to assist the Central Personnel Division pilot project in the development of a model central personnel system for agencies, departments, institutions, and enterprises of the State of North Dakota. Legislative members appointed to the Committee by the Chairman of the Legislative Council were Representatives Robert Reimers, Co-Chairman, Oscar Solberg, and L.E. Garnas; and Senators S.F. Hoffner and Evan E. Lips. Executive agency members appointed by the Governor were Motor Vehicle Registrar Clare Aubol, Co-Chairman, State Auditor Robert Peterson, Director of Institutions, Edward Klecker, State Laboratories Commissioner, Ailsa Simonson, and State Highway Department Personnel Director, Therman Kaldahl.

The report presented herein is a progress report on the work of the Committee, since the Committee at the time of the writing of this report has not finalized its recommendations regarding the state personnel system. At least one additional meeting of the Committee is believed necessary by Committee members.

The progress report of the Central Personnel Division Advisory Steering Committee was submitted to the Legislative Council at the biennial meeting of the Council held at Bismarck. The report was adopted for submission to the Forty-fourth Legislative Assembly by the Legislative Council in November 1974.

BACKGROUND ON EFFORTS TO ESTABLISH A STATE EMPLOYEE PERSONNEL SYSTEM

In a memorandum prepared by the staff of the Legislative Council outlining past efforts to establish a state employee personnel system, it was reported that in recent years, legislation has been introduced in every legislative session to implement some version of a state employee personnel system. The 1967 Legislature, by the passage of Senate Concurrent Resolution PPP, directed the Legislative Council to study the feasibility of creating a merit system covering all state employees. Since that time, two additional studies have been conducted by the Department of Accounts and Purchases regarding the need for a state merit or personnel system.

The 1968 Legislative Council study limited its scope to the classification of positions and a stan-

dard pay plan. The 1968 study resulted in the following Committee observations:

1. Present classification titles and procedures originate from within each department and have little relationship to titles used by other departments.
2. The salary levels for employees not covered by the merit system vary substantially, with the significant percentage not reaching even the minimum for equivalent positions under the merit system.
3. The salary levels for employees at the charitable and penal institutions have more exceptions to the merit system standards than do other departments.

As a result of this study, the Legislative Council recommended legislation to the 1969 Legislative Assembly to implement the Personnel Division within the Executive Office of the Budget of the Department of Accounts and Purchases. Even though the 1969 Legislative Assembly did not pass legislation to implement a personnel system, there has been a continued interest on the part of the Legislature and various legislative committees for the development of a state personnel system. In 1971, the Legislative Assembly included in the appropriation bill to the Department of Accounts and Purchases a line item of \$50,000 for an employee classification study. Pursuant to this directive, the Department of Accounts and Purchases contracted with Ernst & Ernst, a national accounting and management services firm, to conduct a study and an analysis of the present classification and pay practices of the State of North Dakota. That firm's survey reported the following:

1. There is a significant lack of uniformity in the compensation of employees performing similar kinds of work.
2. Based upon a comparison of salary levels by department, there presently exists both higher and lower paying departments.
3. There presently are different formal and informal departmental compensation practices. These various practices result in state employees being compensated differently for the same kinds of work from one department to another.
4. The fundamental cause of the variance in the rates of pay and the existence of difference in compensation practices stem from the absence of any uniform statewide compensation guidelines.

Ernst & Ernst representatives stated that in addition to the probable adverse effect upon employee morale, inconsistency in the absence of uniformity in employee compensation makes it difficult for the state to allocate funds for wages and salaries in the most effective manner.

The Ernst & Ernst recommendations called for uniform policies concerning employee compensation and that such program be administered by one centralized personnel function. They reported further that the Division of Personnel should be given responsibility for eventually developing policies governing other aspects of employee relations since development of standard practices concerning recruiting, selection, fringe benefits, and personnel policies would promote uniformity and administrative coordination.

The information gained from this study and studies conducted in previous bienniums was in part the basis upon which Senate Bill No. 2116, calling for the establishment of a state personnel system based upon merit was introduced in the 1973 Legislative Session. The bill did not pass; however, its consideration is helpful in reviewing the background relating to the establishment of the Central Personnel Division.

The Senate and House versions of Senate Bill No. 2116 considered during the 1973 Legislative Session differed. The House version called for the creation of a five-member public employee relations board with the board's primary responsibility being to foster and protect the merit system personnel administration program in state government which, in addition to work in the area of developing a classification and pay plan, would have involvement in the employment and dismissal of employees within the various departments. The Senate version would have created a personnel division within the Department of Accounts and Purchases to provide for the classification of employment positions and the development of a compensation plan, together with making assistance available to state agencies and personnel administration as they might request. Even though the Senate did not accept the House amended version of the proposed merit system, the following provisions appeared to have met with both Senate and House approval since they are basically included in each plan:

1. Establish an employee position classification system.
2. Continually oversee the operation of the established classification system to prevent abuse and misclassification.
3. Establish and maintain a rostrum of all employees encompassing the classification system.

4. Encourage and assist in the development of effective personnel administration within the several departments, agencies, bureaus, commissions, institutions, and other governmental units of the State.
5. Determine that employment positions are properly classified and encompassed within the existing classification system.
6. Determine appropriate base scales in accordance with reviews, studies, surveys, and findings similar to the type of reports made by Ernst & Ernst.

ESTABLISHMENT OF THE MODEL PERSONNEL DIVISION

The Budget Section at a special meeting on September 5, 1973, took under consideration a request which had been submitted by the Governor to the Emergency Commission to spend \$150,000 in federal funds for the establishment of a model personnel office. The Emergency Commission had delayed action on the request since the legislative members of the Commission had asked that the proposal be presented to the Budget Section of the Legislative Council for comment.

Governor Arthur Link in his proposal to the Budget Section substantiating the need for the establishment of a model personnel division stated the following:

1. I propose to develop a model personnel system through executive directive to include those agencies over which I have executive authority. Agencies outside the Governor's executive authority may volunteer to participate.
2. In consultation with the Director of the Department of Accounts and Purchases, I will select a director of personnel. The director will hire and recruit whatever staff may be necessary. In consultation with the Director of Accounts and Purchases, the director will select a consulting firm to assist in the implementation of the model system.
3. I shall select with the assistance of the director a bipartisan steering committee to assist in the development of personnel policies and procedures. This committee will make recommendations to me regarding a statewide personnel system and develop a legislative proposal for consideration during the 1975 legislative session.
4. The model personnel office will be charged with implementing the Ernst & Ernst classification and pay plan in the participating agencies. It will develop and implement policies and procedures acceptable

to the steering committee. It will develop the capability to successfully assess our human resource needs to assist the Executive Office of the Budget and the Legislature in determining the appropriations for good stewardship of those resources.

The Budget Section recommended to the legislative members of the Emergency Commission that they approve the request for the establishment of a personnel office on a pilot basis in the Department of Accounts and Purchases if:

1. The Emergency Commission is presented a plan in the usual budget format including a staffing plan for the model office;
2. The office will be a division within the Department of Accounts and Purchases;
3. The office is created to develop those elements which are common to both Senate and House versions of Senate Bill No. 2116 considered during the 1973 Legislative Session; and
4. The appointment of legislative members of the steering committee be made by the Legislative Council.

The Model Central Personnel Division was established on February 1, 1974, pursuant to Executive Order No. 1974-3 in which the Governor ordered that:

1. A central personnel division be established within the Department of Accounts and Purchases.
2. The model personnel system established will be implemented in those agencies under executive authority, as well as agencies which voluntarily request to participate.
3. The Director of the Department of Accounts and Purchases will appoint a director of the personnel division. Such appointment shall be effective from February 1, 1974. The division director shall hire and recruit the staff necessary to accomplish the duties outlined, but within the scope and funding authorized by the Emergency Commission.
4. The division director, subject to the approval of the Director of the Department of Accounts and Purchases, may select and retain a consulting firm to assist in accomplishing the objective of this order.
5. The central personnel division will be charged with implementing the Ernst & Ernst classification and pay plan in the participating agencies, developing and implementing personnel policies and procedures

acceptable to the advisory steering committee established in paragraph 6, and assisting in the development of effective personnel administration within the participating agencies.

6. A joint executive legislative advisory steering committee will be established to assist in the development of personnel policies and procedures, to make recommendations regarding the personnel system, and to recommend legislation for consideration by the 1975 Legislative Assembly.

At the first meeting of the Committee on March 20, 1974, the Director of the Central Personnel Division presented a Central Personnel Division status report. He reported that a staff of four had been employed for the first year of the project. He further reported that out of five consulting firms contacted to assist in the project, Public Administration Service was chosen since its proposal was best suited to implement the Ernst & Ernst study, and to assist the Central Personnel Division in the development of a personnel program for the State.

It was reported that 50 agencies employing approximately 5,300 people had received a letter from the Governor offering the assistance of the Central Personnel Division. Because of the time required to classify the large number of employees in higher education, it was reported, that it would not be feasible to include them in the Central Personnel Division's work prior to the meeting of the next Legislative Assembly. He did note, however, that the Central Personnel Division was working with representatives of the State's colleges and universities to coordinate efforts in the development of the personnel systems, and added that the Ernst & Ernst pay and classification plan had been implemented, with slight modifications, by the institutions of higher education.

The Committee urged the Central Personnel Division to prepare data on the estimated fiscal impact of implementing a personnel classification and pay plan so that the Executive Budget Office could use the information in preparing the 1975-77 biennium budget recommendations.

CONSULTANTS' REPORT

The Public Administration Service report including the classification and pay plan for the proposed classified service of the State of North Dakota was completed on October 22, 1974. The report contains recommendations setting forth classification and pay plans for the proposed classified service for the State of North Dakota. Accompanying the report is a companion volume

which contains approximately 540 classification positions.

Classification Plan

The Public Administration Service report indicates that North Dakota State Government consists of a loosely knit confederation of departmental personnel systems with little relation or standardization with one another in terms of either classification or pay, and that, recruitment, selection, and advancement are clearly not based upon any recognized system of merit.

It was recommended by the consultant that the following policies be adopted and followed in the implementation of the recommended classification plan:

1. All employees should be automatically certified to the classification to which their position was classified provided that they have completed their probationary period in that classification in a satisfactory manner at the date of implementation. Those employees not having completed their probationary period should continue on probation until the required time is completed with credit being allowed for time worked in the classification prior to implementation.
2. If an employee is in a position which is classified at a level for which the department head does not feel he is qualified, the department head may request that the Central Personnel Division conduct a noncompetitive qualifying examination to ensure the employee's adequacy.

It was reported that the total number of positions in those departments and agencies covered by the recommended plan totaled approximately 4,750.

Pay Plan

It was indicated in the report that at the present time there is no standardized pay plan or methodology for structuring pay on a statewide basis with the exception of that system in effect under the Merit System Council. As a result, the report states gross inequities presently exist between salaries and wages from one department or agency to another, especially in similar classifications of work which are normally common to most departments.

The report goes on to say that there are a number of undesirable elements in the present methods of establishing pay. First and foremost, it violates the premise and law of equal pay for equal work in the sense of the state as employer. Secondly, there is no formalized management available to the depart-

ments concerned in budget formulation, recruitment, recognition of advancement or merit, or establishment of proper rates of pay for new classifications of work which may be created. Probably the most undesirable effects of such present policies are those of employer uncertainty, lack of understanding of the pay procedure, and usually a dissatisfaction with a system which appears and is arbitrarily applied and administered by each department or agency with its own interpretations, biases, individual considerations, and edicts concerning classification and pay.

It was pointed out that a comprehensive pay survey was conducted during the months of July and August, 1974, among private employers within the State, major governmental jurisdictions within the State, the Federal Government, and nine other states in the proximate region of North Dakota. From this data, 42 pay ranges were established for the various classifications.

The use of steps within the pay ranges is recommended to facilitate good administrative payroll and budgetary procedures, provide knowledge to employees as to their potential earnings while assigned to each range, and prevent arbitrary assigning of unorthodox salary levels within ranges to individuals. It is stated in the report that the following aspects of the application of the pay plan should be emphasized:

1. The proposed pay ranges are intended to be gross compensation for full-time service in the various classes of work as defined by stated departmental policies.
2. The minimum rate or "step one" for each class should be the normal entering rate.
3. Following successful completion of six months in a classification of work, employees should be allowed to advance to the second step in the pay grade.
4. Promotion should normally entail at least a one-step increase in pay and, more, if necessary, to reach the minimum pay rate for the new classification.
5. Implementation of the plan contemplates the abolition of all longevity plans and systems, formal or informal, which are now in effect. Longevity plans serve only to destroy or at least weaken both the concepts for equal pay for equal work and merit as well as to divert money from basic pay ranges and recruitment grades thus benefiting disproportionately the longer-term employee as compared to the new employee, and fostering lax if not improper maintenance of the pay plan.

Due to the present system of convening Legislative Sessions every other year, it is recommended by the consultants that the forthcoming session of the Legislature should place high on its priority list the solution to the problem of not being able to provide for necessary adjustments to the overall pay plan through budgetary processes during its off year.

Of four alternatives for early implementation of the pay plan on January 1, 1975, the Public Administration Service recommends that a plan be based on a 7.5 percent increase of the present base salary not to exceed the maximum of the proposed salary ranges plus any increase that would be necessary to bring employees' salaries up to the minimum of the proposed salary ranges. The estimated cost of implementation of this plan effective January 1, 1975, would be \$2.45 million with an average 11-percent salary increase. It is estimated that the total cumulative additional costs over present personnel service expenditure rates for all positions covered would amount to approximately \$25 million. Should it be decided to implement the above-mentioned pay plan on January 1, 1975, the consultant recommends that a 10-percent increase for the entire pay plan be adopted for the first fiscal year of the biennium starting on July 1, 1975, and that an additional five percent increase for the entire pay plan be adopted for the second fiscal year of the biennium starting on July 1, 1976.

The Legislative Council recommends a \$6.5 million appropriation bill providing salary increases to state employees for the six-month period beginning January 1, 1975. Included in this amount is \$3 million for salary increases to employees in the agencies involved in the Personnel Division pilot project. The moneys will be made available to the various agencies based on a formula requiring that employees be paid at least the minimum of the pay range as determined by the agency or institution director. Please refer to the Legislative Council Report on the Study of State Employees' Salaries for further information regarding the discussion of the inflationary impact on state employee salaries and action taken in regard to increasing state employee salaries.

Fringe Benefits

The Public Administration Service also conducted a survey of the fringe benefits offered by private employers in the State and compared these practices to benefits offered to state employees. It was reported that the State currently offers fringe benefits which are more liberal than those reported by most employers in the State; however, there are some positions in the fringe benefit packages the State offers which should be strengthened. The following comments and recommendations were

made by the Public Service Administration regarding fringe benefits offered by the State:

1. No changes in current vacation policies are recommended.
2. It is recommended that present sick leave policies be continued unchanged.
3. Regarding holidays with pay, it is recommended that the statewide policy for employees be adjusted to nine days, regardless of department of employment. It is further recommended that for all classified employees, premium rates of 1½ times the base pay rate be paid for holiday work.
4. It is recommended that work shift differentials offered by the State Hospital be extended to Grafton State School system employees providing nursing care services.
5. It is recommended that a standard life insurance plan be offered, and that the state government pay at least 50 percent of the premium. It is further recommended that the policy insure employees' lives for at least 75 percent of the employees' annual income.
6. The retirement plan offered by the Highway Patrol and the Employment Security Bureau are recommended to continue unchanged. The Public Employees' Retirement System effectively excludes higher-income earners from equitable treatment in terms of employer contributions. It is recommended that cost sharing for benefits be extended to all employees — including those earning in excess of \$12,500 annually.

Agency Response

The Committee expressed its interest in hearing agency and department response to the proposed classification and pay plan and invited administrators to express their views regarding the development of the plan.

It was stated at this time that upon implementation of the proposed pay plan, employees with similar qualifications performing similar types of work would not be paid the same amounts since the proposed plan is funded sufficiently to only provide salary increase to bring some employees' salaries up to the minimum of the salary ranges while they may have properly been classified at an advanced step in that salary range. It was also stated that salary ranges for some positions would place restrictions on recruiting for positions where there is a limited number of qualified personnel since the salary offered for these jobs could not exceed the maximum of the salary range. Concern was also expressed regarding the ability of the Central

Personnel Division to implement the proposed plan for all state employees by July 1, 1975, because of limited staff and the amount of time required to properly classify the employees of the remaining departments and institutions not included in the Central Personnel Division study. After hearing the comments from agency and department officials, the Committee recommended that the Central Personnel Division continue to make a special effort to communicate with agencies regarding the implementation of a central personnel system.

STUDY OF A BILL ESTABLISHING A CENTRAL PERSONNEL DIVISION

At the October 15, 1974 Committee meeting the consultants made recommendations for legislation to establish a central personnel division. The Committee met on October 29, 1974, to discuss a bill draft incorporating the consultants' recommendations and hear comments from agencies and employee organizations regarding the bill. Committee members were urged by administrators and representatives of employee associations to give their attention to the following concerns:

1. The importance of the bill meeting federal merit system requirements so as not to jeopardize millions of dollars of federal funding;
2. Exclusion of coverage of the Central Personnel Division System to uniformed officers of the Highway Patrol;
3. The degree of employee responsiveness to the Central Personnel Division and department heads;
4. The amount of administrative restrictions on the removal of employees;
5. The veterans preference ratings;
6. The degree of centralization of state employment procedures and requirements;
7. The lack of a provision in the bill for representation by department heads on the state personnel board; and
8. The desirability of exempting professionals in policymaking positions; such as lawyers, physicians, psychiatrists, clinical psychologists, and dentists.

The Resolutions Committee of the NDSEA presented a resolution to the Committee calling for the 1975 Legislative Assembly to pass legislation effective January 1, 1975, that would provide a uniform statewide system of personnel administration based on ability.

The Committee, at the time of the writing of this report, has not taken final action on the bill establishing a central personnel division, however, it has recommended that this report present the status of the bill as discussed by the Committee to this date.

The bill in its present form creates a five-member state personnel board and a central personnel division. The division is created within the Department of Accounts and Purchases. The board would consist of two classified employee members elected by state employees, and three members appointed by the Governor. No member of the board shall hold any elected or appointed office for four years preceding his appointment or election to the board. The board is to have authority to review and approve or disapprove the rules, regulations, and actions implemented by the division.

The division director is to be appointed by the Director of the Department of Accounts and Purchases. The director of the division will be responsible for establishing general policies, rules, and regulations; maintenance of a classification and compensation plan; certification of payrolls; and the handling of promotional and employment examinations. The division may furnish assistance to political subdivisions with personnel systems on a cost reimbursed basis and is also charged with providing those services necessary to comply with federal standards for grant-in-aid agencies.

Veterans' preferences are to be recognized in employment testing in accordance with Chapter 37-19.1 of the North Dakota Century Code. Discrimination based on sex, race, color, religion, national origin, age and political affiliation is prohibited.

Positions held by elected and appointed officials, heads of departments, legislative branch officers and employees, Judicial Branch members and employees, faculties of the institutions of higher education, and consultants are to be excepted from the job classification and compensation plan.

Present employees, who have worked more than six months prior to the effective date of the bill, will be covered by the bill and will not be subject to a trial period of employment.

The bill also provides for the repeal of Chapter 54-42 of the North Dakota Century Code, relating to the Merit System Council, and transfers all personnel and records of the North Dakota Merit System Council to the Central Personnel Division.

EDUCATION "A"

The Committee on Education "A" was assigned four study resolutions. House Concurrent Resolution No. 3063 directed the Legislative Council to conduct a comprehensive study of vocational education. Senate Concurrent Resolution No. 4048 called for a study of cooperative vocational education programs at the secondary level. House Concurrent Resolution No. 3089 called for a study to determine how the State can best care for and educate students who are both deaf and blind. Senate Concurrent Resolution No. 4064 directed the Legislative Council to conduct a study of several areas of education, including the financing of vocational and special education and state aid for junior colleges.

The members of the Committee on Education "A" were Representatives Charles Mertens, Chairman, LuGale Backlin, George Benedict, LeRoy Erickson, Elynor Hendrickson, Gordon Larson, Joe Leibhan, and Royden Rued, and Senators Chuck Goodman, Curtis Peterson, Chester Reiten, and Gilman Strand. During the course of the interim period, the Committee toured the facilities of Bismarck Junior College and the Area Technical Vocational Center, Lake Region Junior College in Devils Lake, the Sheyenne Valley Vocational Center in Cooperstown, and the secondary and post-secondary vocational education facilities in Watertown, South Dakota.

The report of the Committee on Education "A" was submitted to the Legislative Council at the biennial meeting of the Council held at Bismarck. The report and recommended legislation were adopted for submission to the Forty-fourth Legislative Assembly by the Legislative Council in November 1974.

VOCATIONAL EDUCATION

Introduction

The fact that the Legislative Assembly is interested in vocational education is illustrated by the fact that there were three resolutions calling for studies of this subject during this interim. One of these resolutions called for a comprehensive study of the total field of vocational education, while the others called for studies of cooperative vocational education programs at the secondary level and of the financing of vocational education.

Although the appropriations for vocational education have been increasing rapidly in recent years, the members of the Committee were acutely aware of the fact that we have only begun to make vocational education available to all of our secondary students in North Dakota. While all 13 of the high schools with enrollments of 500 or more offer two or

more vocational education programs, only two of the 139 high schools with less than 100 students offer two or more such programs. The need for such programs can be illustrated by the fact that of every 100 youths 18 years of age, 80 will finish high school but only 20 will finish college. By 1975, only one percent of the nation's work force will be unskilled.

To meet the needs of the future, the members of the Committee were faced with the challenge of attempting to find a method to provide equal opportunity insofar as is reasonably possible, given the realities of the status of school district organization in the State and the economic feasibility of providing vocational education programs in smaller school systems.

The Need for Cooperation

Because of the capital investment required for many vocational education courses, and because of the relatively high cost per pupil of many such courses as compared to other programs at the secondary level, the members of the Committee concluded that it is simply not economically feasible to provide comprehensive vocational education programs in all of the school districts in the State. Therefore, the Committee searched for methods and incentives to encourage school districts to cooperate so that vocational education offerings can be made available to as many pupils as possible.

With the assistance of the State Board of Vocational Education, two pilot projects of cooperative secondary vocational education programs have been started in North Dakota. Both of these pilot programs were implemented in September 1973 and thus offered the members of the Committee the opportunity to study these programs during the organizational period.

One of these programs involves four North Dakota high schools in cooperation with two Minnesota schools in the Wahpeton-Breckenridge area. The Minn-Dak Vocational Center draws from a total student enrollment from these six schools of 2,672, and offers courses in auto mechanics, office education, health occupations, and distributive education. The second pilot project includes five school districts around Cooperstown and Finley, North Dakota. Although first known as the Griggs-Steele Vocational Center, this program has been renamed the Sheyenne Valley Vocational Center to more appropriately describe the territory served. The Sheyenne Valley Vocational Center offers programs in office education, health occupations, auto mechanics, building trades, welding, and vocational agriculture. The five schools involved in this program have a total enrollment of 428.

The Committee toured the facilities in Coopers-town and met with the administrators and board members of that center. Those who are participating in this project are enthusiastic about the opportunities it has made available to the students. One superintendent of a small high school said he was able to offer 11 more courses for a cost of only \$3,000 per year by cooperating in the program.

The members of the Committee also heard testimony from a number of other administrators and school board members from school districts which are considering entering cooperative programs with other school districts. When asked for suggestions concerning what can be done to encourage cooperation in these programs, several ideas were frequently mentioned. One of these involved a request that the Legislative Assembly provide legal status for the boards that govern cooperative vocational education centers. At the present time, there is no provision for special governing boards in the statutes, and thus each individual school board must make all of the decisions involving the cooperative programs. The cooperating school districts have organized advisory boards, but these boards have no legal authority. The vocational centers of the pilot projects have been programs of one of the cooperating school districts and the other school districts have contracted for vocational education services. However, those appearing before the Committee requested that the school boards appoint from their own members representatives to serve on a center board which would have the authority to operate the vocational centers. Those who testified in favor of this proposal believe that it will give each school district more input into the management of the vocational centers and will thus serve as an incentive to encourage more districts to participate. It is also argued that if the center boards had legal status, the relationships between the participating school districts would more clearly be spelled out and this would assist in the reconciliation of differences.

Incentives to Cooperate

Another suggestion made to the Committee was that state laws be amended to permit the State to reimburse school districts for the costs of transporting pupils to and from vocational education centers. At the present time, transportation payments are limited to the costs of transporting pupils to and from school, and no provision is made for transporting pupils between schools or between schools and vocational education centers.

Another idea proposed to the Committee was that the State allow schools to count for accreditation purposes those courses which pupils take in vocational education centers. At the present time, high schools must offer a total of 22 units of study in order to be accredited by the Department of Public Instruction, but no allowance is made to

permit high schools to count courses offered to their students in other schools through cooperative programs.

As with all other educational programs, financing is a problem with vocational education programs of all kinds. One superintendent testified that his school district had not joined a cooperative program because of the fear of the financial obligations which would be incurred. Other witnesses testified that the initial equipment costs for a vocational center were an obstacle to school districts wishing to join. The level of state funding for initial equipment purchases was previously set by the State Board for Vocational Education at 50 percent of cost, but the board recently amended that policy and will now provide 100 percent of the costs of initial equipment purchases for cooperative vocational education centers. It was noted that this policy not only provides an incentive to school districts by making it easier to organize a cooperative program, but it will also make it easier for other schools to "buy into" an existing cooperative program and it will ease the problems when districts withdraw from centers.

Commingle Vocational Funds

Senate Concurrent Resolution No. 4064 called for a consideration of new methods of financing vocational education programs, including the possibility of commingling vocational education funds and distributing them through the Foundation Program. Although the Committee did not become involved with a study of the Foundation Program, as the Committee on Education "B" was assigned that subject, the members of the Committee discussed the possibility of applying a special weighting factor to vocational programs and distributing the funds through the Foundation Program. However, it was found there are large variances in the costs of different vocational programs, thus making it difficult to place a single weighting factor on such programs. It was also noted that school districts would be discouraged from offering the more expensive programs if a single weighting factor were used. A system of applying a formula would eliminate the advantage of the present system in which judgment is used in placing the funds where they can do the most good. But perhaps the most important reason the Committee did not believe it would be desirable to tie vocational programs to the Foundation Program is that Federal funds provide the bulk of moneys available for the grant program and these funds could be jeopardized if not spent according to federal guidelines.

Recommendations

The Committee recommends four bills which it believes will encourage cooperation by providing incentives to school districts. One bill permits the creation of multidistrict vocational education boards

by three or more school districts. Such boards would have at least one representative from each participating school district, and those districts having 300 or more high school students would be allowed one member for each 300 high school students. Center board members would be appointed by participating school boards from among their members, and the persons so appointed would be compensated from center funds for attending meetings in the same manner and amount as school board members are allowed by law.

The Center boards would select officers and would have the powers and duties spelled out in the bill. Among these powers and duties would be responsibility to supervise, manage, and control a multidistrict vocational education center, to contract with and pay personnel, to obtain equipment, to receive private, local, state, or federal funds for such center, and to enter into contracts consistent with the other powers and duties provided in the bill. Although the center boards would not have the authority to issue bonds or levy taxes, they would be authorized to lease, acquire, purchase, or sell vocational education facilities, including real property. The power to purchase or sell real property is limited by a provision requiring approval of two-thirds of the school boards of the participating school districts. It is contemplated that this authority would be used only in those instances where federal or private funds would make the purchase of facilities possible, but in most cases it would be expected that center boards would lease facilities from one of the participating school districts or other parties.

The bill provides that the participating school districts would share expenses in proportion to their high school enrollments as compared to the total high school enrollment of all of the participating school districts. The number of students would be allocated on the same proportionate basis as is used for the assessment of expenses. The bill makes provision for new districts joining an existing center, for the withdrawal of a district from a center, and for the dissolution of centers.

It should be emphasized that the bill recommended by the Committee creates a new avenue for cooperation among school districts. Nothing in the bill is mandatory, and nothing in the bill places restrictions or limitations on any authority school districts now have under the Joint Exercise of Governmental Powers provisions of Chapter 54-40 of the North Dakota Century Code. Although some administrators and school board members urged that the State draw the boundaries for cooperative programs, the Committee does not recommend such an alternative. It was decided that the drawing of such boundaries is best left up to local school boards in cooperation with the State Board of Vocational Education.

The Committee also recommends a bill to permit high schools to count for accreditation purposes vocational education courses offered through cooperative arrangements approved by the State Board of Vocational Education. This measure is intended to serve as an incentive to small high schools to enter into cooperative arrangements with other schools. Without this provision, smaller high schools must provide the 22 minimum courses in addition to any courses offered through cooperative vocational education programs. It is believed this bill will permit the smaller high schools to offer more courses with proportionately less expense.

The bill recommended by the Committee amends Section 15-41-24 to include the necessary language to permit the counting of such courses for accreditation purposes. In addition, the bill spells out vocational education course areas to include home economics, agriculture, office education, distributive education, trade industrial, technical, and health occupations. The bill also deletes some obsolete language in this section. As the State Board of Vocational Education approves cooperative vocational education programs and the Department of Public Instruction accredits schools, the effect of this bill would be that the Department of Public Instruction would count for accreditation purposes any cooperative vocational education courses approved by the Board of Vocational Education.

A third bill recommended by the Committee would amend Section 15-40.1-16 and 15-40.1-17 of the North Dakota Century Code to provide state aid for transportation not only for transporting pupils to and from school as is now the case but also for transporting pupils to and from schools in other districts and to and from schools within school districts for vocational education courses offered through cooperative arrangements approved by the State Board of Vocational Education. There was a considerable amount of discussion concerning the recommendation that transportation payments be made for transporting pupils to and from schools within school districts, as it was noted there would be administrative problems in distinguishing vocational students from other students who may have courses in more than one school within the larger cities. On the other hand, it was observed that it may not be equitable to provide transportation aid if pupils are transported to a school in another district, but not to provide such aid if the other school happens to be within the same school district. Testimony indicated that there is at least one school district outside of the major cities in the State in which there are two high schools. Based upon the two pilot programs now in existence, six projected cooperative programs, and the four largest school districts in the State, it has been estimated that approximately 45,000 miles per year would be traveled by school buses transporting pupils to and

from vocational centers. Of this total, not quite 40,000 miles represents the estimated mileage in the four largest cities. It should be noted that not all of these miles represent new miles, as some of them constitute mileage for transporting pupils to and from school and are therefore presently covered by the state program. The Committee was aware of the fact that the Committee on Education "B" was studying transportation aid formulas, and, because it was not known what mileage rate would be recommended, the Committee was unable to make an estimate of the cost of this recommendation.

The fourth bill recommended by the Committee would provide a permissive five-mill levy for school districts for the purpose of participating in cooperative vocational education programs approved by the State Board of Vocational Education. This mill levy could be levied upon resolution of the school board and would be in addition to any other mill levies authorized by law. The bill amends Section 15-20.1-08, which as it presently reads provides for a three-mill levy by counties for the purpose of maintaining a vocational education school. This mill levy authorization for counties has never been used. The members of the Committee expressed the belief that this bill will provide another incentive for smaller high schools to encourage participation in cooperative vocational education programs.

EDUCATION OF DEAF-BLIND CHILDREN

Background

House Concurrent Resolution No. 3089 called for a study by the Legislative Council to determine how the State of North Dakota should provide for the education of children who are both deaf and blind. This resolution was introduced by the House Committee on Appropriations and was introduced after the Director of Institutions asked to transfer the appropriation for the deaf-blind program from the Grafton State School to the School for the Blind in Grand Forks.

Historically, North Dakota has provided a program for the education of deaf children at the School for the Deaf in Devils Lake and a program for the education of blind children at the School for the Blind at Bathgate, and, after an initiated measure passed by the voters in 1958, the School for the Blind has been moved to Grand Forks. Children who were both deaf and blind, because of the special needs and training required, were sent to institutions outside of the State. However, after the rubella (German measles) epidemic of 1964, the out-of-state institutions have become overcrowded and are no longer able to take the North Dakota deaf-blind children.

A program for the deaf-blind was started at the Grafton State School in 1971. A full-time director

was hired in April 1972 for this program. Because of the overcrowded conditions which exist at the Grafton State School, temporary quarters for this program were located in the hospital building, and, although this has not proven to be the most desirable location, the program has remained in the hospital.

Of the 20 deaf-blind children who have been identified in North Dakota, 12 are enrolled in the deaf-blind program at the Grafton State School. These children range in age from 2½ to 20. Most are the result of the rubella epidemic of 1964. Only two are totally deaf and totally blind.

Alternatives Considered

The Committee consulted with parents of the deaf-blind children, parents of blind children, representatives of the North Dakota Association for the Blind, and the superintendents of the Grafton State School, the School for the Blind, and the School for the Deaf. The parents of the deaf-blind children, although they believe the program in Grafton has been very good for their children, all agreed the program should be moved to the School for the Blind. The parents of the blind children expressed no opposition but wanted assurance that the education program for blind children would not be diminished. The Superintendent of the Grafton State School said he believed that institution had the wrong environment for these children, and that if the program were to remain there, a considerable investment would be needed. The Superintendent of the School for the Deaf testified his institution has no facilities for the deaf-blind program. The Superintendent of the School for the Blind said his institution has a capacity of 50 and the enrollment averages about 35. He said the School for the Blind could handle this program with the present facilities and that he did not believe the deaf-blind program would jeopardize the education program for blind children.

The representatives of the North Dakota Association for the Blind testified they had reservations about moving the deaf-blind program to the School for the Blind because they believed that institution was intended only for the blind and that major changes would be necessary if deaf-blind were to be added. A former Superintendent of the School for the Blind wrote to the Committee expressing his opposition to the move. He said he believed the establishment of a deaf-blind program at the School for the Blind would adversely affect the educational program that is now established for the blind. He also said the two groups have nothing in common and different educational techniques are required for each group. He recommended that the Committee consult with an expert in the field, and he suggested Dr. Edward J. Waterhouse of the Perkins School for the Blind in Watertown, Massachusetts.

The Committee contacted Dr. Waterhouse and he made a special trip to North Dakota to be of service. Dr. Waterhouse has a particular interest in North Dakota because his wife is a native of this State and attended the School for the Blind in Bathgate. He visited both the Grafton State School and the School for the Blind in Grand Forks prior to appearing before the Committee in March 1974. Dr. Waterhouse testified that he very strongly favored having deaf-blind children educated, whenever possible, in schools for the blind. He said blind children, more than deaf children, are able to relate to the deaf-blind and provide them with social experiences essential to their growth.

Dr. Waterhouse also noted that an institution for the mentally retarded is a very poor place for the education of the deaf-blind. He said the retarded cannot provide the kind of stimulus the deaf-blind children need to overcome the effects of their double handicap. After visiting the deaf-blind program at the Grafton State School, Dr. Waterhouse testified that he had no criticism of the program. He reported that he had been very favorably impressed with the School for the Blind in Grand Forks. He said the environment outside the classroom is a critical part of the development of the deaf-blind child.

The testimony before the Committee indicated that there are several advantages to moving the deaf-blind program to the School for the Blind in Grand Forks. Aside from the possible stigma of mental retardation which exists in the present location, the proximity to the University of North Dakota, with its various medical and social service programs and personnel, makes the Grand Forks location more desirable. In addition, the School for the Blind has the capacity to absorb the students with no additional construction. If North Dakota is following the national trend, there will be more blind students attending public schools in the future, reducing the enrollment of the single-handicapped students at the School for the Blind.

The director of the deaf-blind program estimated that of the 12 children in the program now, 10 could move to Grand Forks. There will always be a need for some of the severely handicapped to remain at the Grafton State School for custodial care. It should be emphasized that, although some deaf-blind children will remain in Grafton, there would only be one basic deaf-blind program. As an illustration, there are some children at the Grafton institution who are blind and others who are deaf, yet the State only has one School for the Blind and one School for the Deaf.

There was general agreement among those interested in this subject that the program at Grafton is inadequate to properly care for the needs of the deaf-blind children. The major portion of the funding

is provided by the Federal Government, and this participation by the Federal Government is expected to continue into the future. Although no new facilities will be required at the School for the Blind, it should be noted that the deaf-blind program is a 12-month program and the School for the Blind presently operates on a nine-month program. Thus, some additional costs can be expected.

Charging for the Cost of Care

A related problem concerning the cost of care was called to the Committee's attention by the parents of the deaf-blind children. According to the provisions of Chapter 25-09 of the North Dakota Century Code, the expenses for the cost of care at the Grafton State School are chargeable to the families or estates of the patients at that institution. No such provisions apply to students attending the School for the Blind or the School for the Deaf. Because the deaf-blind program is presently located in Grafton, parents of such children are charged for their care and treatment. However, if those children were either blind or deaf, but not both, the State would provide for their care and education at the School for the Blind or the School for the Deaf without charge. The inequities of this situation demanded a considerable amount of attention during the course of this study. Moving the deaf-blind program from Grafton to Grand Forks will relieve the parents of those children able to make the move, but what of those whose multiple handicaps require their continuance in Grafton. The members of the Committee concluded that there are no simple solutions to this problem, for at the heart of the issue is the fact that the State provides free care and education for those who are either deaf or blind but not for those who are mentally retarded. The total collections at the Grafton State School for fiscal 1973-74 are approximately \$650,000, the major portion of which is collected from third-party payments, such as Social Security and estates. The Committee concluded that there was no equitable way the cost of care could be provided without charge to those who are deaf and blind without making a comparable change in the law concerning those who are mentally retarded, and this was beyond the scope of the Committee's authority.

Recommendations

The Committee recommends that the deaf-blind program be transferred from the Grafton State School to the School for the Blind in Grand Forks. Because this is not a statutory program, no draft was required. However, the Committee understands that the Director of Institutions is requesting funds for the move and that he is including the deaf-blind program in the budget for the School for the Blind.

The Committee also recommends a bill to amend Section 15-47-34 of the North Dakota Century Code to give the Director of Institutions more flexibility in

the placement of deaf-blind children. Section 15-47-34 now provides the Director of Institutions with the authority to send deaf-blind children to institutions outside the State. As recommended by the Committee, the section would provide that, after consulting with the Superintendents of the School for the Blind, the School for the Deaf, and the Grafton State School, the Director of Institutions would determine to which institution deaf-blind children should be sent. If he concluded there were not adequate facilities in the State, he would still have the authority to determine that such children should be sent to institutions outside the state. It should be emphasized that this bill does not give the Director of Institutions the authority to move the deaf-blind program, as the appropriations made by the Legislative Assembly determines the location of the program. Rather, this proposal provides the flexibility to make determinations in individual cases concerning which of the three institutions would be best for a particular child.

JUNIOR COLLEGES AND THE NEED FOR CONSTITUTIONAL REFORM

Background

One portion of Senate Concurrent Resolution No. 4064 directed the Legislative Council to study the impact of state aid to junior colleges. In remarks prepared for the Committee the sponsor of that resolution asked the members to review the entire field of education in North Dakota and to consider the possibility of the need for constitutional revision of the education sections of the State Constitution.

Any study of the control of education in North Dakota must begin with a review of the constitutional and statutory provisions on the subject. Section 82 of the Constitution of North Dakota provides for the office of the Superintendent of Public Instruction and Section 83 provides that his powers and duties shall be prescribed by law. Among the powers and duties which have been established by law, Section 15-21-04 of the North Dakota Century Code provides that the Superintendent of Public Instruction shall have the general supervision of the common and secondary schools of the State and shall be ex officio a member of the Board of the University and School Lands. Article 54 of the constitution was approved in 1938 for the control and administration of state institutions of higher education. Article 54 provides that the Board of Higher Education shall consist of seven members appointed by the Governor with the consent of the Senate and that such members shall be limited to reimbursement of \$7 per day and that annual compensation cannot exceed \$500 nor can annual expenses exceed \$500. Among the powers and duties, the Board is given "full authority over the institutions under its control" and to "do each and every thing necessary and proper for the efficient

and economic administration" of the institutions under its control.

In 1955 the Legislature created the State Board of Public School Education consisting of the Superintendent of Public Instruction plus one member appointed by the Governor with the consent of the Senate from each of the state's six judicial districts. The Superintendent of Public Instruction serves as Executive Director and Secretary of the board and is given the duty of employing such personnel as necessary to carry out the duties of the board by law. The State Board of Public School Education has other statutory responsibilities, and Section 15-20.1-02 of the North Dakota Century Code provides that the board shall also be the State Board of Vocational Education. That statute also provides that the board, acting through the office of the Superintendent of Public Instruction, shall appoint a director and other personnel to carry out the laws concerned with vocational education.

Chapter 15-18 of the North Dakota Century Code provides that the school board of any public school district with a city having a population of 5,000 or more, when approved by two-thirds of the voters of the district, may establish and maintain a junior college. North Dakota now has three junior colleges which have been established pursuant to this law, located in Bismarck, Devils Lake, and Williston. These junior colleges are under the exclusive control of the local school boards, although the school boards may appoint a board of control to direct the management and operation of the junior colleges. In addition, the Board of Higher Education prescribes academic standards and verifies the number of academic students enrolled for purposes of determining the amount of state aid to which each junior college is entitled and the State Board of Vocational Education performs these functions for vocational courses.

The sponsor of the study resolution called attention to several areas of duplication of authority in relation to these various constitutional and statutory boards. Many vocational dollars go to institutions under the control of the Board of Higher Education. Many vocational dollars go to junior colleges where the Board of Higher Education has little supervision of vocational programs. Many higher education dollars go into vocational programs which are not under the Board of Vocational Education. The constitutional State Board of Higher Education does not have control over all state-funded higher education efforts nor does the Board of Vocational Education have absolute control over all vocational offerings in the State. The Board of Higher Education has a degree of responsibility and control over some junior colleges in the State but not all of them.

Financing of Junior Colleges

Although the junior colleges are controlled by local school boards, the State has a considerable financial interest in them. Since 1959, the State has had a state aid program. In addition, the Board of Vocational Education provides grants for vocational offerings. The state aid program has grown from \$200 per pupil in 1959 to \$550 per pupil at the present time. The combined total from state aid payments and vocational education grants total about 46 percent of the total budgets at Bismarck Junior College and Williston Center and almost 52 percent of the total budget at Lake Region Junior College. The balance of the budgets is raised from local mill levies, tuition and fees, gifts, and federal funds. The appropriation for the state aid program for the current biennium is \$2.26 million.

The combined budgets for the three junior colleges is nearly \$3 million per year. The three institutions serve about 2,000 full-time students and 2,000 part-time students per year. Approximately \$9 million has been invested in the three campuses.

The State aid program provides \$550 for each full-time student attending each junior college, provided the student attends for two full semesters or three quarters, and the student carries at least 12 class hours. The junior colleges receive no additional compensation for class hours in addition to 12 per week, nor do they get any state aid for students taking less than 12 class hours per week. The presidents of the three junior colleges appeared before the Committee to urge a change in the method of calculating state aid payments. It was noted that the junior colleges have many part-time students and vocational students who are enrolled in courses which do not necessarily follow a semester or quarterly term. The Committee considered changing the formula to use a straight full-time equivalency basis, but this approach has the disadvantage that it would be possible for some full-time students to entitle the institutions to double state aid payments. For example, if 12 class hours were used as the basis, a vocational student might very well be enrolled in a program in which he had more than 24 class hours of instruction per week.

The junior colleges have traditionally been identified with both academic and vocational programs, although the trend in recent years has been an increased emphasis on vocational programs. Vocational courses cost more per student than academic courses, and even though the junior colleges receive both state aid and vocational education funds for vocational programs, the junior college presidents testified they lost money on several vocational programs and had to use part of the local mill levy funds to operate these programs.

The study resolution raised the issue of the effect of junior colleges on other educational programs.

The junior college presidents testified to the fact that their institutions cooperated with the other schools in their districts and supplemented programs at the secondary level. It is difficult to measure the effect of any program on other programs in a community. It was noted that none of the three affected school districts have public kindergarten programs. On the other hand, two of the three school districts have unlimited mill levies. The fact that the junior colleges have had a beneficial impact on the economics of their communities was also noted.

Control of Junior Colleges

The Committee reviewed the laws and constitutional provisions of other states concerning the control of education. One neighboring state, Montana, has a "shared governance" system for community colleges. The Montana constitution gives the Board of Regents full authority over state institutions plus such control over other institutions as provided by law. The board of Regents in that state has adopted guidelines under which the state board approves the general curricular offerings and approves budgets while the local governing boards approve the specific course offerings and recommend budgets to the state board.

The members of the Committee recognized that the junior colleges are creatures of statute and can be controlled by statute. It was also noted that bills to place the junior colleges under the control of the Board of Higher Education have failed in the past. The Committee considered the advantages and disadvantages of providing state control as compared to state review of the programs at the junior colleges. If control is given to a state board, that control must be taken from some other body, and in the case of the junior colleges, that body would be the local school boards. Thus, the issue centered on the question of the State's interest in these institutions — the fact that the State has a large investment in the junior colleges as well as in the total higher education picture in the State had to be balanced against the advantages of local control over these institutions.

The junior college presidents testified that, if it is determined that a state board should have some control or review function, they recommended that the board be the State Board of Public Education. The reason given for this recommendation is that the board has experience in working with local school boards. The junior college presidents also testified that they believed the local school boards would listen to a review board if that is the arrangement decided upon.

Recommendations

The Committee recommends three bills relating to junior colleges and two alternative concurrent

resolutions for revision of the educational provisions of the State Constitution.

The state aid for junior college program would be calculated under a new formula in the first bill recommended by the Committee. Section 15-18-07 of the North Dakota Century Code would be amended to change the annual allocation for each full-time student to a two-part formula which would reimburse the junior colleges a certain amount per student for each calendar week of attendance plus an equal amount for each full-time equivalent student. The number of full-time equivalent students would be determined by taking the total class hours of all students in attendance who are enrolled in less than 12 class hours and dividing by 12. The members of the Committee believe this new formula will provide more equity in the computation of state aid payments by allowing reimbursement for part-time students, summer session students, and vocational students whose programs do not necessarily follow a semester or quarter. However, it should be emphasized that the Committee is making a recommendation on the formula to be used in computing state aid payments, but is not making a recommendation on what the amount of that reimbursement should be for the coming biennium. For purposes of bill introduction, the amount shown is the present annual rate divided by the number of calendar weeks in a regular school year. The members of the Committee did not believe it was within the scope of their responsibilities to determine the level of support to be used for the next two years.

Another bill recommended by the Committee would amend Section 15-18-08 to provide for an annual review of institutional budgets for junior colleges by the State Board of Public School Education. Because the State Board of Public School Education does not have a full-time staff, the Committee recommends that the staff of the State Board of Vocational Education provide such professional and clerical assistance as is required for this review. The vocational education staff now reviews the vocational portions of the junior college budgets, and this provision is intended to promote efficiency in the review of the budgets. The bill recommended by the Committee deletes language concerning minimum enrollments of 100 students and requiring annual inspections by the two state boards responsible for prescribing standards, as it was believed the former language is obsolete and the latter provision is unnecessary as the state boards should have the flexibility to make inspections whenever in their judgments such inspections are necessary. The members of the Committee believe that this bill will give the State some additional input into the budgetary aspects of the junior colleges while maintaining local control over these institutions.

The third bill relating to junior colleges recommended by the Committee would amend Section 15-18-09 to provide that the State Board of Public Education would have responsibility for verifying the number of students attending junior colleges for purposes of calculating state aid payments. At the present time, the State Board of Higher Education verifies the number of academic students and the State Board of Vocational Education verifies the number of vocational students. The members of the Committee believe this change is consistent with the placement of budgetary review in the Board of Public School Education. The bill provides that the staff of the State Board of Vocational Education shall provide professional and clerical assistance in making the verifications.

The Committee recommends two alternative concurrent resolutions for the revision of the educational provisions in the State Constitution. These alternatives were modeled after the majority and minority reports of the Constitutional Convention of 1972. The majority report of the Constitutional Convention provided for two boards, a State Board of Public Education with responsibility to supervise elementary and secondary education, and a State Board of Higher Education with responsibility to supervise, operate, and control state institutions of higher learning. The office of Superintendent of Public Instruction would be eliminated as a Constitutional office, and each board created would appoint an executive officer. The first alternative recommended by the Committee is basically the majority report of the Constitutional Convention, except that the membership on the two boards has been changed from nine to seven. The members of the Committee expressed the view that this change would eliminate problems because the members would serve seven-year terms. Also, the existing boards both have seven members.

The second alternative recommended by the Committee is a modified version of the minority report at the Constitutional Convention. The minority report of the Constitutional Convention provided for a State Commission of Education which would be divided into three boards to be known as the Public Education Board, the Vocational and Junior College Board, and the University and State College Board. The members of the Committee noted that the minority report raised many questions concerning the division of authority between the Commission and the separate boards. The alternative resolution recommended by the Committee creates a State Commission of Education but does not provide for any separate boards under the commission. The commission would consist of 15 members appointed by the Governor and confirmed by the Senate. The commission would have authority to supervise, set standards, and provide

planning over all levels of education. It would also have full power and authority to supervise, operate, and control programs of public institutions under the control of the commission. The office of Superintendent of Public Instruction would be eliminated and Article 54 of the State Constitution would be repealed.

After studying the control of education in North Dakota during the interim period, the members of the Committee concluded that constitutional revision of the education sections is desirable. However, time did not permit the Committee to give this matter the consideration the members believed necessary prior to making a firm recommendation. Therefore, the Committee voted to recommend both proposals in order to bring this matter before the Legislative Assembly.

SPECIAL EDUCATION

The Committee was directed to study the funding of special education and to consider the possibility of providing new methods of financing special education.

There are some 29,000 children in North Dakota in need of special education services. To meet this need, counties are authorized to levy three mills for county special education programs, and the 1973 Legislature authorized school districts in counties not levying this tax to impose a three-mill levy for special education. School districts may also use general fund moneys for special education programs. In addition, the State has a grant program through which the State provides financial assistance for special education programs. The appropriation for the current biennium is \$3 million.

The 1973 Legislative Assembly enacted House Bill No. 1090, which requires all school districts to submit a plan for implementing special education by July 1, 1975, and to implement special education programs by July 1, 1980. The Committee followed progress of this program during the course of this study.

There are at least two alternative methods for financing special education programs. The first

method is the one followed by the State of making grants for specific programs. The other alternative would provide a weighted unit system tied to the Foundation Program and reimburse school districts based upon the number of pupils in a given classification and the additional cost of each program. The disadvantages to this method include the fact that it encourages school districts to classify pupils as requiring special education and to retain pupils in special education programs beyond the needs of the pupils in order to get more state aid. Another disadvantage is that a weighted-pupil program could place too few funds in some districts and too much in other districts. After all of the school districts have implemented special education plans, it may be possible to apply a formula tied to the Foundation Program which will adequately place special education funds where they are needed. Therefore, the Committee concluded that it is now premature to provide a formula tied to the Foundation Program, and that making grants to school districts is the best method of assuring that the appropriated amounts are placed where the money is most needed.

The Committee members are aware of the continuing need for attention to be given to special education. On April 30, 1974, in the case of *In the Interest of G.H., A Child*, the North Dakota Supreme Court held that the right to a public school education is a right guaranteed by the North Dakota Constitution, and that this right applies to all children with physical or mental handicaps except those, if any, who can derive no benefit from education. The Committee received testimony from persons urging more state funding for special education programs to assist the school districts in implementing special education programs.

The members of the Committee concluded that, although the present state grant program is preferable to the alternative considered at the present time, the Legislative Assembly should follow the progress of the school districts in complying with the mandates of the 1973 law and the courts and that after school districts have had more experience in this field it may be determined that new legislation is desirable.

EDUCATION "B"

Senate Bill No. 2026, the comprehensive educational finance program enacted by the 1973 Legislative Assembly, was, by its own terms, temporary law, and is effective only for the period from July 1, 1973, until June 30, 1975. Thereafter, the provisions of that legislation shall be of no force and effect, and, unless reinstated by the 1975 Legislative Assembly, the laws concerned with the financing of elementary and secondary education will revert to their form as they existed as of June 30, 1973. Senate Bill No. 2026 contained a statement of legislative intent that the Legislative Council review the operation of the provisions of that bill and make a report and recommendations to the Forty-fourth Legislative Assembly. The Legislative Council was also directed to conduct a comprehensive study of the financing of elementary and secondary education by Senate Concurrent Resolution No. 4037. Upon the recommendation of the Resources Development Committee, the Chairman of the Legislative Council directed the Committee to study the effects of any future coal resource development on schools in North Dakota.

The members of the Committee on Education "B" were Senators Donald C. Holand, Chairman, Philip Berube, Evan Lips, Rolland Redlin, I.E. Solberg, and Kenneth Tweten, and Representatives Dean Hildebrand, Irven Jacobson, Kenneth Knudson, John McGauvran, Arthur Raymond, Orville Schindler, Earl Stoltenow, Larry Tinjum, and Cheryl Watkins.

The report of the Committee on Education "B" was submitted to the Legislative Council at the biennial meeting of the Council held at Bismarck. The report and recommended legislation were adopted for submission to the Forty-fourth Legislative Assembly by the Legislative Council in November 1974.

BACKGROUND

The State Foundation Program was essentially first enacted in 1959. Although some amendments were made through the years, the program remained basically unchanged through the 1971 Legislative Session. During the 1971-73 biennium, a crisis in educational finance developed, and the interim Committee on Education conducted a comprehensive study of the problems and alternative solutions. As a result of that study, Senate Bill No. 2026 was developed, which made some major changes in the entire program of financing elementary and secondary education in North Dakota.

Senate Bill No. 2026 dramatically increased the state appropriation for the Foundation Program.

The appropriation grew from approximately \$54 million in 1971-73 to over \$118 million in 1973-75. It should be noted that the latter figure included about \$25 million which would have been distributed through the personal property payback formula but was added to the Foundation Program and distributed to school districts on the basis of student enrollments. The base support payment per pupil, which is the amount used in determining the amount each district will receive after the application of weighting factors, was increased from \$260 to \$540 per pupil. The flat weighting factor for all high schools which existed previously was changed to provide four classes of high school weighting factors in order to more accurately reimburse school districts for the actual costs for each class of school. Senate Bill No. 2026 also made some adjustments in weighting factors for elementary schools.

Senate Bill No. 2026 also incorporated a 20-mill school district equalization factor, the purpose of which was to equalize 20 mills of property taxes in each district. Unlike the 21-mill county levy, this equalization factor is not a mandatory levy. The mechanics of this provision operate as follows: prior to making the state per-pupil payment, the amount which would be raised by 20 mills in each district is subtracted from the state payment due that district.

One feature of the 1973 legislation which received a good deal of attention was the provision that the payment due any school district would 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 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 this provision, which is commonly referred to as the federal impact aid clause, was 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 employed on federal projects. The 21-mill county 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 is then multiplied times the number of students for whom each district receives impact payments, and it is this amount which is subtracted from the state payment to the district.

Senate Bill No. 2026 increased transportation payments for school buses from 16 cents to 23 cents per mile for large school buses and from 7 cents to 10 cents per mile for smaller school buses. High school districts were guaranteed to receive at least as much from total state and local sources as they received from combined state and local sources for general operating purposes during the previous school year, but to receive the benefits of this provision, each high school district is required to levy at least 75 percent over and above the normal mill levy maximum for general fund purposes.

One of the more popular features of Senate Bill No. 2026 was the mandatory mill levy reduction it provided. The maximum levy for high school districts was reduced from 34 to 24 mills, and for those districts operating on excess levies, comparable reductions were required. School districts with over 4,000 population which had either unlimited mill levies or increased levies of a specific number of mills were required to reduce their levies by at least 15 mills.

In order to be eligible for Foundation Program payments, school districts were required to certify that, except for vocational and special education programs and new programs related to new facilities, and courses of study eliminated in the previous two years, no new courses of study had been implemented since the effective date of the law which had not received the unanimous consent of the school boards.

The interim Committee on Education which developed Senate Bill No. 2026 had closely followed court decisions in other states which held that educational opportunity should not be dependent upon the wealth of the district. The issue finally reached the United States Supreme Court, which held on March 21, 1973, in the case of **San Antonio Independent School District v. Rodriguez**, that the state school finance program in Texas did not violate any rights protected by the United States Constitution. However, the members of the Committee were of the opinion that it was not a fear of the Court's decision that had prompted their support of the basic concept of Senate Bill No. 2026, but rather the conviction that the financing of schools is a state responsibility and that every effort should be made to provide the best possible system of financing elementary and secondary education within the limitations of the resources available.

SCOPE OF THE STUDY

Introduction

The Committee held a total of 10 meetings during the interim period. During this time, the Committee sought input from educators, school administrators, school board members, and private citizens. A wide

variety of subjects were reviewed, many of which were included in the comprehensive educational finance program enacted in 1973. The Committee conducted two polls of school administrators, and the concerns and recommendations of the persons responding to the questionnaires made an important contribution and were used by the Committee in identifying problem areas. In the last questionnaire sent to administrators, over 70 percent of the school superintendents in the State offered their comments concerning Senate Bill No. 2026.

Inflation

Although Senate Bill No. 2026 provided additional state funds to school districts in North Dakota, double-digit inflation soon took its toll on much of the benefits which resulted from this legislation. The mill levy roll-back required by the 1973 law further eroded these gains. In the responses to questionnaires sent to school administrators, the word "inflation" was volunteered by more answers than any other term. While other concerns were representative of certain sizes of school districts, inflation was emphasized by administrators of schools of all sizes.

State Transportation Aid

Few areas of expenditures have increased as rapidly as transportation costs, due not only to normal inflationary pressures but also to the energy crisis. Some school administrators testified that their gasoline costs have doubled. The Committee was handicapped in that it did not have cost information more recent than for the 1972-73 school year. Information for the 1973-74 school year should be compiled in time for the Legislative Session, so the members of the Committee recognized that any recommendations they might make concerning reimbursement for transportation costs would be based upon information which would be outdated by the time of the Session and thus subject to change.

The Department of Public Instruction conducted a study of school bus transportation costs. The tabulation of the results of this study were as follows:

Capacity of School Buses	Number of Buses	Average Cost Per Mile
16 or under	11	14'
17-36	42	26.9'
42-48	482	30'
54 and over	105	42.3'

The members of the Committee recognized that the per-mile costs varied from school district to school district. Some districts in the more densely

populated areas of the State have a high ridership per mile as compared to the more sparsely populated areas. The Committee considered creating either three or four categories for state reimbursement based upon average costs per mile. However, it was noted that if the reimbursement rate is increased based upon capacity of the buses, there would be a tendency to purchase larger buses than necessary to get the higher mileage rate. One possible solution would be to require districts to list the actual number of students transported and to pay according to the number of pupils transported rather than according to the capacity of the buses, but it was observed that this method could work a hardship on districts with rapidly declining enrollments.

The Committee also considered using a density factor in the transportation aid formula. However, density factors have the disadvantage of having to be updated continually. An alternative to a density factor would be to reimburse school districts according to a formula using a basic amount per mile plus a payment for each pupil transported each day. It was noted that if the present mileage rate of 23 cents per mile is used, together with a per-pupil payment of 15 cents per day, most school districts would receive about the same revenue as they would if the mileage rate were a straight 28 cents per mile. The larger buses, which are concentrated primarily in the high-density areas of the State, would benefit from such a formula and school districts would have no incentive to purchase larger buses than necessary. In addition, those districts which now "deadhead" buses, or make empty trips, would be reimbursed only for the mileage traveled on such trips, thus a formula which is not based entirely on mileage reduces the incentive for such trips.

One of the concerns expressed by school administrators was the fact that the local transportation costs must come out of the school districts' general funds and reduce the funds available for educational programs. Also, some reorganized districts are required to provide school bus transportation, yet there is no authorization for the raising of the necessary revenue. In order to alleviate this situation, several school administrators suggested a special mill levy for transportation purposes.

Mill Levy Limitations

Several administrators from smaller school districts testified that they believed the concept of reimbursing different sizes of schools according to average costs was unfair because of the discriminatory nature of the law which restricts smaller school districts in the number of mills which may be levied but permits the voters in districts with over 4,000 population to approve unlimited mill levies of a specified number of mills.

Some administrators urged that authority be provided in the law to permit school districts to deal with crises such as the emergency situation created by inflation. However, the members of the Committee noted that, if the population limitation on the statute permitting unlimited mill levies were removed, school boards and voters would have the flexibility to deal with each situation at the local level without requiring an extra mill levy for such emergencies.

As previously noted, Senate Bill No. 2026 reduced the maximum levy for high school districts from 34 to 24 mills and also provided for a mandatory 15-mill reduction in those districts with unlimited mill levies or increased levies of a specific number of mills. The testimony before the Committee indicated that nearly all districts required more than 24 mills with which to operate, but that the 24-mill limitation was acceptable so long as local districts had the flexibility with which to meet varying situations. It was indicated that the 15-mill roll-back was contrary to the intent of the unlimited mill levy authority which had been approved by the voters in each district with such authority.

Equalization Factor

Some administrators and school board members urged that the 20-mill equalization factor be reduced. Most of those urging such an action represented districts with high valuations and relatively few pupils, and the intended result of their recommendation would be a higher payment for their districts. However, it was noted that if the equalization factor were reduced, the state payment to all districts would increase, and, unless the appropriation were increased accordingly, the average payment per pupil would remain the same. Thus, if the equalization factor were reduced, the net result would be a redistribution of the appropriated moneys with a greater portion going to those districts which have a comparatively high valuation behind each pupil. The members of the Committee concluded that this would be a step away from equalization of educational opportunity.

The Committee considered requiring that the 20-mill equalization factor be adjusted to reflect assessment levels in different school districts in the same manner as the 21-mill county equalization levy is now adjusted. However, it became apparent that adjusting the school district equalization factor would be considerably more complex than adjusting the county mill levy. For one thing, county boundaries are constant, while school district boundaries change. In addition, some school districts cross county lines with the result that some property within the district is assessed at one level and other property is assessed at another level. Another problem is that some school districts have inadequate numbers of sales from which to make a

study, plus the fact that there is no way under present laws for taxing officials to obtain complete information concerning consideration paid for sales which are made.

Cost Basis and Weighting Factors

One of the basic concepts in Senate Bill No. 2026 is that school districts should be reimbursed according to the cost of educating pupils. The laws were amended to include a number of weighting factors for elementary and secondary schools based upon the average costs reported for various sizes of schools. The Committee was interested in determining whether school districts are using uniform criteria in reporting costs. During the same Legislative Session that saw passage of Senate Bill No. 2026, another measure, House Bill No. 1460, provided that in determining the educational cost per pupil, no expenditures for capital outlay or debt service, school activities or school lunch programs, and expenditures for the cost of transportation shall be included.

Some believe that the effect of weighting factors is the opposite of equalizing educational opportunity, because those districts with greater resources are able to offer more comprehensive programs and thus reflect higher per-pupil costs. A comparison between the weighting factors in Senate Bill No. 2026 and actual cost experience indicated that the actual costs for school districts having an average daily membership of 1,000 or more elementary pupils were greater than expected, and as a result the weighting factor for that classification resulted in a lower reimbursement rate for such schools in relationship to other classes of elementary schools. The weighting factor for this class of elementary schools was established at .92, while the experience for the 1972-73 school term would indicate that actual costs would justify a weighting factor of .954.

A comparison of the weighting factors for high schools established in Senate Bill No. 2026 and actual cost experience indicates a change in the relationships of the various classes of high schools. The costs reported for medium-sized high schools reflected a reduction as compared to average costs for other classes of pupils. The cost information is based upon the 1972-73 school year, the first year for which the effects of House Bill No. 1460 were reported.

One of the answers provided to those who believe the weighting factors perpetuate poverty among some school districts is that an effort has been made to give smaller districts a slightly higher weighting factor than the actual costs have justified because it is recognized that they do not have the same opportunities for local effort as do the larger school districts. Members of the Committee expressed the

belief that the answer may be to permit all school districts an equal opportunity concerning mill levies. It was also noted that better cost information will become available as administrators become more familiar with the accounting procedures required to report accurately to the Department of Public Instruction.

State Aid for Kindergarten

Information furnished by the Department of Public Instruction indicates that approximately 2,000 students are now enrolled in public kindergarten programs in North Dakota. The potential for such programs is nearly 10,000. Kindergarten programs are generally on a half-day basis and testimony indicated that a weighting factor of .49 for kindergarten pupils would be justified in any aid program. The members of the Committee noted that there is an increasing amount of support for state aid for kindergarten programs. Testimony to the Committee reflected that 84 percent of the states now provide state aid for kindergarten. The State School Boards Association passed a resolution supporting state aid for kindergarten and nearly 75 percent of the school administrators polled by the Committee favor this program.

It was called to the Committee's attention that the present law permits petitioners to require that the school boards call an election on the issue of establishing a kindergarten program, but that school boards have no authority to raise additional funds in the event the voters approve of the program.

State Aid for Summer School Programs

Under the present Foundation Program, no provision is made for state aid for summer school programs. Some students who attend summer schools complete their high school education early while others who would otherwise require a fifth year of high school are able to graduate on schedule. In both cases, it was noted that the State is a beneficiary, as Foundation Program payments are saved for any semester a pupil is not in attendance.

Junior High School Programs

A number of persons who testified before the Committee urged that consideration be given to providing a higher weighting factor for junior high school pupils. At the present time, state law classifies elementary schools to include grades 1-8 and high schools to include grades 9-12, even though many different divisions exist in different school districts. Although it costs more to educate junior high school pupils than it does to educate elementary pupils, the costs are not as high for such pupils as they are for high school pupils.

Federal Impact Aid Payments

At the time of passage of Senate Bill No. 2026, it was recognized that there was a potential conflict

with federal law in the provision requiring the deduction of a portion of Public Law 81-874 impact payments in determining Foundation Program payments to those districts receiving federal impact payments. The reason for this conflict was caused by a provision in the federal law that no payments could be made to a district if the State took federal payments into consideration for state aid purposes if it resulted in less state aid to the district than such district would have received if it were not eligible for federal payments. Although it was recognized that the State could not deduct the entire amount a district received in federal funds, it was not clear whether the Federal Government would permit the State to deduct the duplicate portion which results from the fact that the 21-mill levy is used both in determining the federal and state payments.

Beginning in September 1972, during the course of the interim study preceding the 1973 Session, the Department of Public Instruction sought a formal opinion from the United States Office of Education on this issue. On March 19, 1973, three days after the Legislature adjourned, the Superintendent of Public Instruction was notified that the North Dakota law was contrary to congressional intent, and North Dakota was not eligible for federal impact aid payments. Although the reduction in state payments for this provision is approximately \$1 million per year, the school districts of the State were faced with the loss of about \$5 million in federal impact aid payments. To illustrate the seriousness of the issue, if the school districts did not receive the federal payments, and if the State could thus not deduct the \$1 million per year, there would not be sufficient revenue left in the appropriation to make the full Foundation Program payments. Therefore, all of the schools in the State could have suffered a financial loss over this issue.

The federal decision placed North Dakota and three other states with similar laws in a two-way squeeze. The states could not equalize educational effort if Public Law 81-874 money could not be treated the same as tax revenue. The inequities of this situation drew the attention of the Education Commission of the States and other leaders in the field of education. This matter was called to the attention of congressional leaders from the affected states, and Congress enacted the necessary legislation to permit an exception in the federal law for states with equalization programs similar to North Dakota's. Through the cooperation of North Dakota's Congressional Delegation, this amendment was first enacted as a temporary measure in an amendment to the School Lunch Law of 1973, and finally as a permanent amendment approved August 21, 1974. The United States Commissioner of Education has notified the Superintendent of Public Instruction that North Dakota school districts will not lose any funds and that payments will continue

until the necessary regulations have been promulgated.

School District Oil and Gas Production Taxes

North Dakota imposes a five percent gross production tax on oil and gas produced in the State. This tax is in lieu of all property taxes on the property rights, leases, machinery, and equipment used in the production of the oil and gas. The revenues generated from this tax are apportioned between the State and the county in which the oil and gas is produced. The county share is then distributed as follows: 40 percent to the county road and bridge fund, 45 percent to school districts in the county on an average daily attendance basis, and 15 percent to the incorporated cities in the county based upon population.

Several members of the Committee expressed the view that it is not equitable to deduct federal impact aid program payments from state payments while not making any allowance for oil and gas gross production allocations to school districts. The total revenues to school districts is about \$650,000 per year. The Committee considered two alternatives. One suggestion was that the 21-mill levy portion of oil and gas gross production tax payments be subtracted in the same manner as Public Law 81-874 payments are now subtracted. Another idea proposed was that the school district portion of oil and gas tax proceeds be deposited in the counties' equalization funds and that such amounts be subtracted from the state payments to those counties. Those appearing before the Committee from the oil and gas producing counties said the revenue they received should not be confused with federal impact aid payments, as the oil and gas tax revenues are in lieu of property taxes. It was also noted that the oil and gas tax revenues are not related to impact on the school districts, and that the distribution is made to all school districts in the producing counties whether or not there is oil or gas activity in the school districts.

School Activities Funds

A few years ago it was determined that school district activities were subject to the sales and use tax. The 1971 Legislature then passed a bill which provided that such funds were exempt from the sales and use tax if expended by school boards in the same manner as other school district expenses. Many school districts then placed revenues from activities in their general funds. After House Bill No. 1460 in 1973 provided that school activities were not to be counted as a part of the cost of education, it was discovered that there was a lack of uniformity in the handling of activities funds by school districts. Testimony indicated that if all high school districts were required to establish an activities fund, the information supplied concerning the cost of

education should be more accurate and that, if the activities funds were to be handled in the same manner as other school district funds, the tax exempt status of such moneys could be preserved.

Restrictions on New Courses

Senate Bill No. 2026 provided that, except for vocational and special education programs and new programs related to new facilities and courses of study eliminated during the previous two years, no new courses of study could be added without the unanimous consent of the school boards. A study by the Department of Public Instruction indicated that there was compliance with this provision. Testimony before the Committee indicated that it is believed the restriction defeated one of the major purposes of Senate Bill No. 2026, which was to provide greater equality of educational opportunity. The effect of this provision, it was said, was to deny to school boards the authority to improve their programs.

The Importance of Equal Tax Assessments

Property taxes have historically been the primary source of tax revenue for local governments in North Dakota. Property taxes generate more state and local revenue than any other single tax, and 60 percent of property taxes are for school purposes. In spite of efforts to shift the burden of local governmental and educational financing to state-collected taxes, the property tax will likely remain a primary source of revenue for local government and will continue to supply a substantial portion of the revenue for elementary and secondary education.

Senate Bill No. 2026 provides for a 20-mill equalization factor in addition to the 21-mill county equalization levy. In order for true equality of treatment to exist, it is essential that assessments be equal throughout the State. Without equality of assessments, these equalization factors may create further inequities instead of easing them. If, for example, the assessment level within a school district is lower than neighboring school districts, the district with the lower assessment is required to make less local effort and receives more than its fair share from the state and the county equalization fund.

In 1963 the Legislature attempted to correct the problem of unequal assessments by creating the sales ratio study. The sales ratio study (which was renamed the sales, market, and productivity study in 1973) is only as good as the information available to assessors. The information upon which to base the sales ratio study has been reduced substantially since the elimination of federal revenue stamps, and the Tax Department must use fewer sales in the study each year. At the present time the Tax Department has information on approximately 13,000 sales, 10,000 of which are residential sales.

Suggestions were made to the Committee that a full disclosure law be enacted requiring that information concerning sales prices on property be made available to taxing officials. Other suggestions were made that county assessors be appointed and that other efforts be made to improve the quality of assessments in the State.

Personal Property Replacement Funds

Senate Bill No. 2026 provided that the share of personal property tax replacement funds which would otherwise be paid to school districts would be added to the Foundation Program. The effect of this change is that the moneys are distributed to school districts based upon the number of students in each district rather than based upon the amount of personal property in such district. The bill provided one exception, and that is for the share of personal property replacement moneys for junior colleges because junior colleges, although controlled by school districts, do not receive state aid through the Foundation Program.

Testimony presented to the Committee indicated that there is one additional program under school districts which does not receive Foundation Program payments. Chapter 40-55 of the North Dakota Century Code provides for public recreation systems which may be under cities, townships, park districts, or school districts. Upon approval of the voters, the governing bodies of such programs may levy taxes to finance such programs. While most of these programs were under the jurisdiction of park districts, a few were under school districts. Therefore, such programs which were under school districts were eligible for personal property replacement funds prior to the passage of Senate Bill No. 2026. Some members of the Committee expressed concern for these programs and suggested that the law be amended to provide an exception for those programs which were in existence at the time of passage of Senate Bill No. 2026. Others were of the view that this was a matter which would best be handled by a privately sponsored bill.

School District Tuition Payments

Senate Bill No. 2026 provided that, in determining the tuition payments for pupils attending school in other districts, there shall be deducted any payments received for those pupils from the county equalization fund and state payments received by the admitting district, less the average amount per resident pupil realized from a 20-mill school district levy. The reason for deducting the average amount per resident pupil realized from 20 mills is that the taxpayers of the admitting district have contributed that amount through their property taxes, and therefore it was not believed to be fair to reduce the amount of tuition due by the full state payment. On the other hand, it was noted that in computing the State Foundation Program payment due a district,

all North Dakota resident pupils are counted, and therefore, it was contended it is not fair to the sending district to exclude its pupils in calculating the average amount per pupil raised from the 20 mills. If there are more pupils in the calculation, the amount subtracted from the Foundation payment is less, thereby increasing the amount of the Foundation payment deduction and reducing the amount of tuition due the admitting district. In order to accomplish this, the Committee was urged to amend the tuition law to change the reference to resident pupils, which relates to the pupils who are residents of the admitting district, to include all North Dakota resident pupils enrolled in the district.

The business manager of one large high school district called the Committee's attention to the fact that some school districts are levying for tuition purposes but not making timely payments to the admitting school districts. He said the sending districts deposit the funds and draw interest and the law provides no penalties for delinquent tuition accounts. Thus, the admitting districts often provide a full year's education before receiving payment. The Superintendent of Public Instruction called the Committee's attention to a related set of facts in which school districts accept nonresident pupils in order to qualify for additional Foundation Program payments. The Superintendent of Public Instruction said some of these districts make little or no effort to charge or collect tuition.

Proportionate Payments for Special Education Pupils

The law on special education contains a provision that exceptional children who are enrolled in approved programs of special education shall be deemed to be regularly enrolled in the school district providing the program and shall be included in determining Foundation Program payments whether or not such pupils are regularly attending school in the school district receiving such payment. This provision could create a problem in the case of parochial or private school students who attend only the special education courses in the public schools. The Committee was urged to amend the law to make a provision for proportionate payments for such students similar to the provision in Senate Bill No. 2026 providing for proportionate payments for students enrolled in specific courses.

Impact Programs and the State School Construction Fund

Upon the recommendation of the Resources Development Committee, the Committee was directed to study the effects of any future coal resource development on schools. It was noted that the Foundation Program contains a built-in impact aid program, in that if a school district has an influx of new pupils, the State Foundation Program payments will be automatically increased. In ad-

dition, the Committee followed the progress of the Committee on Finance and Taxation in developing a state impact aid program for all political subdivisions. For these reasons, the members of the Committee decided to concentrate their attention to the capital construction needs of the school districts in the coal development area.

The Superintendent of Public Instruction surveyed the capacity and the bonding potential of the school districts in the coal development area. The study revealed that all of the school districts in the area have a capacity to absorb additional pupils and all have unused bonding capacity. However, it should be noted that capacity to absorb additional students is dependent upon the new pupils being properly distributed in the respective age groups. And although all of the districts have some unused bonding capacity, this bonding capacity is not adequate to build substantial additional facilities.

As bonding limitations are established by the State Constitution, the Committee concentrated on other alternatives. North Dakota now assists school districts in constructing and improving school buildings through a loan program known as the State School Construction Fund. The State School Construction Fund was created in 1953 with an appropriation of \$5 million and has now grown to about \$9 million. In order to qualify for a loan, a school district must be bonded to its legal maximum and must be levying the maximum mill levy for the maintenance of a building fund. As the loans made under the State School Construction Fund are over and above the bonding limits established by the Constitution, the State in effect takes title to the buildings and leases them to the school districts.

The interest rate charged on loans is 2½ percent, and the maximum which can be loaned a district under present law is 10 percent of the taxable valuation of the district, or 15 percent in emergencies, not to exceed \$150,000 unless the school district has a larger taxable valuation than \$1,500,000 in which case the maximum is 10 percent of taxable valuation not to exceed \$400,000. The term of the loans is 20 years.

Testimony indicated that building costs have risen rapidly in the past few years. Suggestions made to the Committee included the possibility of increasing the amounts which may be loaned to school districts plus increasing the terms of such loans. In order to assure there will be sufficient funds available, particularly for the school districts in the coal development areas, it was also suggested that the amount of funds available be increased by making an appropriation from the General Fund to the State School Construction Fund.

Votes Required for Bond Issues and Building Fund Levies

Subsection 6 of Section 21-03-07 permits school boards to issue bonds for buildings and other purposes upon the authorization of 60 percent of the electors voting on the question. Section 57-15-16 requires approval of 60 percent of the voters before a school board can levy taxes for school building funds. Most of the discussion on these issues revolved around questions of whether the majority should rule or whether property owners needed some additional protection. The argument was made that good bond issues pass even when 60 percent approval votes are required. Some believe that bond issues place a mortgage on property, and therefore the 60 percent approval requirement is justified. As a compromise, a suggestion was made that the requirement on bond issues be reduced from 60 percent to 55 percent.

Declining Enrollments

Senate Bill No. 2026 contained two provisions protecting school districts having declining enrollments. One provision guaranteed each district the same in state and local funds as it received from these sources during the 1972-73 school year provided that such districts made a 75 percent excess levy for its general fund. The second provision guaranteed all districts as much during the second year of the current biennium as they received during the first year of the biennium. Various methods of protecting school districts were suggested, although it was recognized that guarantees must have limitations, for if a district with declining enrollments is continually guaranteed a certain amount, that district might reach a point where it would still be receiving its guaranteed amount but would have no students. One method of providing assistance to districts with declining enrollments is to provide a larger base payment the second year of the biennium, which guarantees a larger payment per pupil. Another suggestion made was that the State provide a one-year lag in reducing payments based on declining enrollments, thus guaranteeing that districts would receive no less than they would if they had their previous year's enrollments.

Base Payment, Appropriation, and Revenue Sharing

Senate Bill No. 2026 provided a base payment of \$540 per pupil for each year of the current biennium. The average cost per pupil in the State for the 1972-73 school year was \$735.25. Starting with that amount and adding 10 percent per year for inflation and then taking 70 percent of the total as the state goal established at the time of passage of Senate Bill No. 2026 would indicate a support level of about \$620 the first year and \$680 the second year of the next biennium. It was noted that more recent cost figures will be available during the Legislative Session.

If the above-mentioned base payments are used, and considering there will be 150,000 units, a gross total of \$93 million the first year and \$102 million the second year would be required. Adding to this amount transportation payments for two years of \$15.5 million, subtracting \$26.9 for the 21-mill levy, subtracting \$25 million for the 20-mill equalization factor, and subtracting \$2 million for the federal impact aid deduction leaves a net appropriation required of \$156.6 million. The appropriation for Senate Bill No. 2026 was \$118.2 million or \$38.4 million less than this projection.

It was noted that the appropriation for the Foundation Program has traditionally been included in the budget of the Department of Public Instruction, although Senate Bill No. 2026 contained the appropriation for the current biennium. The Committee also considered the possibility of including a statement of legislative intent that revenue sharing funds be used for the Foundation Program similar to the statement which appeared in the 1973 law. However, it was noted that the amount of revenue sharing funds will be reduced in the coming biennium, and members of the Committee expressed the view that this matter would best be left to the Appropriations Committees during the Session. Members of the Committee also expressed the view that it would be desirable to have the appropriation for the Foundation Program in the budget request of the Department of Public Instruction.

Permanence of Legislation

Senate Bill No. 2026 was, by its own terms, temporary law and will expire unless reenacted. That bill also included a statement of legislative intent that a study be conducted to review the operations of the law. That study now conducted, the members of the Committee expressed the view that the replacement legislation should become a part of the permanent laws of this State and that there was no need that the new law be temporary.

RECOMMENDATIONS

Introduction

The Committee recommends a total of 14 bills and resolutions. The major piece of legislation recommended is the comprehensive educational finance bill to replace Senate Bill No. 2026. In addition, the Committee recommends 12 other bills and one concurrent resolution.

Comprehensive Educational Finance Bill

The Committee recommends a bill which will make permanent the basic concepts for financing elementary and secondary education contained in Senate Bill No. 2026. The bill provides for an increase in per-pupil payments and a broadening of the base of such payments to include kindergarten pupils and summer school programs. In addition,

the bill recommended by the Committee changes the state transportation aid formula to include a daily per-pupil payment in addition to a mileage allowance.

That portion of personal property tax replacements now going to school districts, with the exception of such payments for junior colleges, will continue to be added to the Foundation Program and distributed to school districts on the basis of student enrollments rather than on the basis of the personal property payback formula. The 20-mill equalization factor and the deduction of the 21-mill portion of federal impact aid payments will continue unchanged.

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 \$540 to \$620 the

first year and \$680 the second year of the next biennium. The Committee recommends no changes in the weighting factors for high schools. Based upon cost information, the Committee recommends an increase in weighting factors for two classes of elementary schools plus a new classification for 7th and 8th graders and a new classification for kindergarten pupils. Senate Bill No. 2026 had a weighting factor of .88 for elementary schools with at least 200 pupils which were in districts with less than 1,000 pupils. This classification has been combined with those elementary schools having 100 to 199 pupils in Senate Bill No. 2026 and the new combined classification has a weighting factor of .90. In addition, those elementary schools in districts with 1,000 or more elementary pupils have been increased from a weighting factor of .92 to .95. Applying these weighting factors to the proposed base payment will result in the following schedule of payments for the two years of the coming biennium:

First year base — \$620
 Second year base — \$680

Per-Pupil Payments	Weighting Factor	1st year Payment	2nd year Payment
Elementary Schools			
One Room Rural	1.30	\$ 806.00	\$ 884.00
Kindergarten49	303.80	333.20
Elementary less than 100 in ADM	1.00	620.00	680.00
Elementary 100 to 999 total ADM90	558.00	612.00
7th and 8th Grade Students	1.00	620.00	680.00
Total district elementary ADM 1000 or more95	589.00	646.00
High Schools			
High school 1 to 74 in ADM	1.70	\$1,054.00	\$1,156.00
High school 75 to 149 in ADM	1.40	868.00	952.00
High school 150 to 549 in ADM	1.32	818.40	897.60
High school ADM of 550 or more	1.20	744.00	816.00

The guarantee that each 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 is continued to avoid the situation in which a district might receive more money if it had fewer pupils. To protect school districts with declining enrollments by giving them time in which to adjust, the bill provides that no school district shall receive less in Foundation Program payments for any year than such district would have received based upon its enrollment the previous school year.

The bill continues the provision allowing proportionate payments for students enrolled in nonpublic schools for graduation but who take specific courses in the public schools. In addition, the bill provides for proportionate payments to school districts offering high school summer school

programs provided each course offered in such programs satisfies requirements for graduation and comprises at least as many clock hours as courses offered during the regular school term.

The bill provides that payments from county equalization funds to school districts in bordering states shall be made after subtracting the amount realized from a 20-mill levy in the sending school district divided by the total number of resident pupils enrolled in the school district plus the number of resident pupils from the district attending school in another state. The bill also provides that in computing tuition payments for a pupil attending in another district, the average amount per North Dakota resident pupil enrolled in the school district realized from a 20-mill school district levy shall be deducted from the amount of the Foundation Program payment before such amount is subtracted

from the tuition payment due the admitting district. The 1973 law provided that only the pupils who were residents of the admitting district were counted in this computation, and the change is intended to provide equity for the sending districts by giving them credit for their pupils in this computation.

The Committee recommends a formula for transportation aid payments which will reimburse school districts 12 cents per mile for school buses having a capacity of 16 or fewer pupils and 23 cents per mile plus 15 cents per day for each pupil transported for school buses having a capacity of 17 or more. The 15 cents per day payment would not be paid for transporting pupils to schools located in the cities in which such pupils live.

The Committee recommends retaining the 24-mill maximum levy established in Senate Bill No. 2026. In addition, the Committee recommends the removal of the 4,000 population limitation on the law permitting the voters in a school district to approve unlimited mill levies and levies of a specific number of mills. The Committee also recommends the deletion of the requirement that a majority of the voters in both the incorporated and unincorporated areas of reorganized districts must approve in mill levy elections to provide either an unlimited mill levy or a levy of a specific number of mills but to permit a combined vote.

The bill recommended by the Committee does not contain an appropriation, as this has been included in the budget request of the Department of Public Instruction. In addition, the bill does not contain a statement of legislative intent concerning revenue sharing funds, nor sections providing restrictions on new course offerings and providing that the law will be temporary.

Mill Levy for Transportation

The Committee recommends a bill to amend and reenact Section 15-34.2-06 of the North Dakota Century Code to permit any school district providing transportation to levy a tax sufficient for such purposes. The statute now provides for a five-mill levy for an allowance which may be paid by school districts instead of providing transportation for students to attend a county agricultural and training school or a high school in another district. The bill deletes the obsolete language and permits the levy to be used for optional payments permitted by another section of law for families who provide transportation for pupils living more than two miles from school.

Kindergarten Programs

The comprehensive educational finance bill recommended by the Committee provides for state aid for kindergarten programs through the Foundation Program. In addition, the Committee

recommends a separate bill which would permit school boards to establish kindergarten programs on their own motion. A school board establishing a kindergarten program would have the authority to submit the question of providing a mill levy sufficient to finance the program to the electors of the school district. Any mill levies approved by the voters would be levied until the kindergarten program was discontinued or the school board determined the levy was no longer necessary.

Oil and Gas Gross Production Tax Allocations for School Districts

The Committee recommends a bill to place the school district portion of oil and gas gross production tax allocations in the county equalization funds in the school districts in which the oil or gas is produced. The amounts deposited in the county equalization funds would then be subtracted from the State Foundation Program payment to those counties.

School District Tuition Payments

The Committee recommends two bills related to school district tuition payments. One bill would create Section 15-40.2-13 of the North Dakota Century Code to provide for the charging of six percent simple interest on delinquent tuition payments from sending school districts. The bill also provides that school districts shall remit to the admitting district not less than one-half of the annual tuition at the end of each semester of attendance.

The second bill related to tuition payments would amend and reenact Section 15-40.2-04 to provide that any school district that fails to sign a tuition agreement and fails to charge and collect tuition for nonresident students shall forfeit Foundation Program payments for those nonresident students for whom tuition is not paid. This bill is intended to remove any incentive to accept nonresident pupils in order to qualify for additional Foundation Program payments without charging tuition as provided by law.

School Activities Funds

The Committee recommends a bill to amend Section 15-29-13 to require that each school district establish an activities fund. Receipts from school activities would be deposited in such fund and disbursements would be made upon the signature of the president of the school board and countersigned by the clerk. Each superintendent would be required to submit a monthly report to the school board on the accounts in the activities fund. The Committee also recommends a change in the language providing for incidental revolving funds to remove the \$3,000 limit on such funds and to permit school boards to establish the amounts to be placed in such funds. This bill is intended to result in the separation of

activities and general fund expenditures in order that more accurate reports on the cost of education will be made to the Department of Public Instruction.

Bond Issue and Building Fund Elections

The Committee recommends two bills concerning the vote required in school district elections. One of these bills would amend subsection 6 of Section 21-03-07 to change the vote required in school district bond issue elections from 60 percent to 55 percent. The other bill would amend Section 57-15-16 to change the vote required to approve a school building fund levy from 60 percent to a majority of the electors voting on the question. This bill would also reduce the number of votes required to discontinue a building fund levy or change a building fund plan from 60 percent to a simple majority.

Proportionate Payments for Special Education Pupils

The Committee recommends a bill to amend Section 15-59-06 to provide that students enrolled in nonpublic schools but who are attending special education programs in the public schools shall entitle the public school districts to proportionate payments in relation to the proportion of a normal school day as such students participate in such special education programs. The bill provides that a normal school day shall be deemed to consist of six hours.

State School Construction Fund

The Committee recommends two bills which affect the state school construction fund. The first bill would amend Sections 15-60-04 and 15-60-05 to change the maximum which may be loaned to any district from 10 percent of the taxable valuation or 15 percent in emergencies to 20 percent of the taxable valuation. While the present law places a dollar limitation of \$150,000 or 10 percent of the taxable valuation in districts with over \$1.5 million up to a maximum of \$400,000, the Committee recommends that the maximum be increased to \$600,000. The Committee also recommends that the terms of such loans be increased from 20 years to 30 years. The Committee does not recommend a change in the rate of interest on loans which is 2½ percent, as it was concluded this is one way the State has of assisting school districts requiring new or expanded facilities.

The second bill recommended by the Committee would transfer \$1 million on July 1, 1975, and \$1 million on July 1, 1976, from the general fund to the state school construction fund. The total in the fund is approximately \$9 million, and this transfer would bring the total to about \$11 million. The bill also contains a statement of legislative intent that the size of the fund be increased through transfers of funds by the respective Legislative Assemblies until the fund has a balance of \$15 million.

Although the Committee was aware that many school districts could benefit from these changes, one of the major reasons for these recommendations is to assist school districts in the coal development areas in obtaining necessary funds for expansion projects to meet the demands of an increased student population.

Statements of Consideration

The Committee recommends a bill to require that a statement of consideration be filed with deeds. Noting that there had been opposition to similar legislation in the past based upon the viewpoint that sales information should not have to be made public, the Committee recommends that the person filing a deed in the office of the register of deeds would have the choice of either certifying on the face of the deed the amount of full consideration paid for the property or certifying that he has filed a report of the full consideration paid for the property with the State Tax Commissioner. Registers of deeds would forward the information gathered in their offices monthly to the Tax Commissioner. The bill contains a penalty for willfully providing false information. In addition, the bill provides that disclosure would not be required in certain specified cases in which the information would not be of much value in the sales ratio study, including sales between family members and sales where nonprofit organizations or governmental agencies are involved.

The members of the Committee believe that this bill will be of value in providing necessary information to assure equality of assessments, and therefore improve the administration of the equalization program for schools. The members of the Committee also believe that the confidentiality of sales information will be protected by the provision giving persons filing deeds the option of submitting their reports directly to the State Tax Commissioner.

Study of Assessment Districts

Because there are so many assessment districts and assessors in the State, the members of the Committee expressed the view that one of the methods of improving the quality of assessment information which is vitally important to the equalization program for schools is to improve the administration of the property tax. Suggestions were made that consideration should be given to changing the method of making assessments from the township and city level to either counties or school districts. The Committee members believe that this matter should be explored, and therefore the Committee recommends a concurrent resolution calling for a study during the next interim of the feasibility of establishing assessments of property according to school district or other political subdivision boundaries.

FINANCE AND TAXATION

The Committee on Finance and Taxation was assigned three study resolutions. House Concurrent Resolution No. 3065 directed the Legislative Council to study methods of providing tax relief to beginning farmers and ranchers. House Concurrent Resolution No. 3090 called for a study of the questions of taxation and jurisdiction concerning Indians and non-Indians on Indian reservations. Senate Concurrent Resolution No. 4039 directed that a study be conducted of the laws, practices, and procedures involved with the sales, market, and productivity studies for assessment purposes. In addition to the studies directed by resolution, the Committee was directed by the Chairman of the Legislative Council to study the taxation aspects of coal development in North Dakota and also to conduct a study of the estate tax.

The members of the Committee on Finance and Taxation were Representatives Richard J. Backes, Chairman, Eldred Dornacker, Ralph Dotzenrod, William Gackle, Alvin Hausauer, Karnes Johnson, Theodore Lang, Bruce Laughlin, Gordon Matheny, Arnold Nermyr, Mrs. J. Lloyd Stone, Francis Weber, and Joe Welder; and Senators C. Morris Anderson, Jay Schultz, and Frank Shablow.

The report of the Committee on Finance and Taxation was submitted to the Legislative Council at the biennial meeting of the Council held at Bismarck. The report and recommended legislation were adopted for submission to the Forty-fourth Legislative Assembly by the Legislative Council in November 1974.

COAL DEVELOPMENT TAXATION

Introduction

Upon the recommendation of the Resources Development Committee, the Chairman of the Legislative Council directed the Committee to study the following areas related to the taxation aspects of coal development:

1. Coal severance taxes.
2. Property tax aspects of coal gasification plants.
3. Distribution of revenues, including a state impact aid program and the possibility of requiring the prepayment of taxes to meet initial impact costs.

Severance Tax on Coal

Several bills have been introduced in recent Legislative Sessions to impose a severance tax on coal. Two bills on this subject were introduced in 1973. Senate Bill No. 2400 would have imposed a tax of five cents per ton and Senate Bill No. 2416 would have imposed a tax of five percent of the gross value

of coal mined. The former bill was passed but was vetoed by the Governor. In his veto message, the Governor noted that the bill did nothing to correct the present situation in which coal mined, sold, and used within the State is subject to the four percent sales tax, but coal which is shipped out of State is exempt from that tax. Although all coal mined in the State would have been taxed equally under that legislation, the tax advantage on coal shipped out of State would have remained. Senate Bill No. 2400, if approved, would not have been effective until July 1, 1975.

In order to rectify the situation raised in the Governor's veto message, the Committee determined at an early stage that any severance tax imposed should be in lieu of the sales tax. With the inclusion of this provision, coal used in the State is taxed at the same rate as coal shipped out of State.

The Committee discussed at length the advantages and disadvantages of severance taxes based on value as opposed to severance taxes based on a straight tonnage basis. Representatives of the coal industry urged that the tax be based on a flat sum per ton because it would be easier to compute and, in their view, it would be more equitable since different producers have different sales prices. Testimony indicated that sales price differs from month to month in some cost-plus contracts and that different accounting methods result in different prices. It was also noted that the sales price on new contracts is considerably higher than on existing contracts because of the effects of inflation on the capital investment required to open new mines.

The main advantage to a tax based upon a percentage of value is that the revenue generated rises with the cost of the product, thus alleviating any necessity to amend the law to keep up with inflation. The price of lignite is estimated to rise from the present average of about \$2 per ton to from \$3 to \$4 per ton in the next two years. Those who favor the percentage tax believe biennial debates over the tax rates can be avoided if the tax is tied to the value of the product.

In order to determine whether other states which have a severance tax based on value have had problems in administering these taxes, the Committee directed the staff to correspond with the states having such a tax. In the responses received, none reported any serious problems in determining value or in administering a severance tax on coal based on value.

While present coal production in North Dakota is just over seven million tons per year, there are currently three large electrical generating plants in

the construction or planning stages which will use North Dakota lignite. Each of these new plants will require two million or more tons of coal per year. The State Tax Department has estimated that coal production in this State will approach 30 million tons during the 1975-77 biennium. It should be emphasized that this estimate does not include any coal mined for gasification purposes, as the first coal gasification plant, if constructed, is not scheduled to begin production until 1981.

All of the persons appearing before the Committee, including representatives of the coal industry, expressed support for the concept of a severance tax on coal. There are, of course, differences of opinion concerning the method of imposing such a tax and also on what constitutes a "reasonable" rate of such a tax.

The Committee recommends a bill which would impose a severance tax of 10 percent of the gross value of coal mined, with a minimum tax of 25 cents per ton. The bill defines gross value to mean the contract sales price. In cases where the mining company consumes the coal, or if the coal is sold for less than market value because the contract is not an arm's length agreement or something other than cash is part of the exchange, or if the operator of a coal mine neglects or refuses to file the reports required, the State Tax Commissioner would have the authority to impute the value of the coal by using the average contract sales price based on the reports received from other companies. In determining gross value, shipping, hauling, processing, or other charges arising between the point of severance and the point of sale would not be included.

The bill recommended by the Committee provides that the severance tax would be in lieu of sales and use taxes. Most of the administrative provisions in the bill are similar to the provisions found in the oil and gas gross production tax law. However, the Committee increased the reporting time from 30 to 45 days after the end of each calendar quarter based upon testimony that different coal companies use different accounting methods and that this change would be more workable for them.

The members of the Committee recognize that it is not intended that the severance tax bill serve to meet the impact needs of the political subdivisions, as the tax on real property and taxes imposed in lieu of personal property taxes are intended to serve that purpose. However, because some of the coal mining areas will not have the benefit of coal development plants, the members of the Committee decided that a portion of the severance tax proceeds should be returned to the political subdivisions. The bill recommended by the Committee provides that 10 percent of the revenues collected would be allocated to the coal producing counties in the proportion as

the coal mined in each county bears to the total tonnage mined in the State. The proceeds of each county's share would then be distributed in a manner similar to that in the oil and gas gross production tax law: 40 percent to the county, 45 percent to the schools in the county based on average daily attendance, and 15 percent to incorporated cities based on population.

Fifty percent of the revenues collected would be deposited in a special trust fund to be administered by the Board of University and School Lands. The purpose of the trust fund would be to replace the non-renewable resource removed from the land. The income from the trust fund would be deposited in the State's general fund, as would the remaining 40 percent of the revenues collected.

Based upon present production, the severance tax bill would generate approximately \$1.8 million per year. However, based upon the estimated increase in coal mining over the next biennium, the revenue realized would be about \$7.5 million for the two-year period at present prices. If the price of coal increases to an average price of \$3 per ton, the minimum tax would no longer be applicable and the 10 percent of value rate would generate about \$9 million.

Taxes on Coal Development Plants

The North Dakota State Water Commission has granted a conditional water permit to the Michigan Wisconsin Pipe Line Company for purposes of producing synthetic natural gas from lignite coal. In considering the taxation aspects of this new industry, the Committee began with a review of the existing laws which would apply. Under present statutes, the greater portion of the investment in a coal gasification plant would be exempt from taxation because the machinery and equipment of such a plant would be classified as personal property. It was suggested that the Legislature reclassify the machinery and equipment as real property as has been done with the machinery and equipment of oil and sugar refineries; but the effect of this method would be to drastically reduce mill levies in those political subdivisions in which the plant is located, but would do nothing to meet the impact needs of neighboring political subdivisions. Although the Committee concentrated its attention on the first gasification plant proposed by the Michigan Wisconsin Company, the members were well aware of the fact that they would be laying the groundwork for a tax program which would apply to many more plants if present projections for the industry hold true. Therefore, it was necessary to consider the effect of any tax package proposed on future plants, many of which may be constructed near county lines resulting in imposing impact costs on political subdivisions which would get nothing from the real property tax as it is now imposed.

Therefore, the members of the Committee considered a wide variety of alternative proposals, including several which would impose a tax in lieu of personal property taxes. Among these possibilities would be a privilege tax, a gross production or gross receipts tax, an energy conversion tax, or some combination of these alternatives.

In searching for a method to tax these plants, the Committee considered the possibility of applying an in lieu tax and determining the rate of the tax in a manner similar to that used in determining the amount of property taxes. The Committee was particularly interested in finding a method of imposing a tax which would be equivalent to the tax which would be generated if these plants were subject to the average statewide mill levies, thus preventing the situation in which the increase in the tax base in the political subdivisions of situs would result in mill levies being reduced to bare minimums. However, Section 174 of the Constitution of North Dakota limits the State in the property tax field to levies which result in revenue not exceeding what four mills on the dollar of the assessed valuation of all taxable property in the State would raise. The court decisions interpreting Section 174 have concluded that any method of taxation based upon assessed valuation falls within the four-mill levy limitation.

However, the State has wide latitude in adopting some other reasonable basis other than the value of the property for tax purposes. The authority of the State is limited only by the Fourteenth Amendment to the United States Constitution. Thus, a statute will be upheld if the classification rests upon some reasonable basis, is not arbitrary, and all property within a class is treated uniformly.

Section 179 of the Constitution of North Dakota requires that all property subject to the property tax must be assessed locally unless it falls within the exceptions listed in that section. The exceptions describe public utility and transportation properties which must be assessed by the State Board of Equalization. Although not absolutely settled, it is generally believed that an out-of-state wholesale distributor of gas would not be considered a public utility because of precedents which have required that public utilities must serve the citizens of the State.

The Committee also considered methods of using the property tax base of a coal energy plant and implementing a program of tax sharing so that neighboring political subdivisions might be reimbursed for their impact cost. The Committee reviewed the Minnesota metropolitan fiscal disparities law, which was passed in 1971 and under which property taxes on 40 percent of all new commercial and industrial property would be pooled

and distributed to all local governments in a seven-county area defined in the law. Local mill rates would apply to 60 percent of the increased tax base and the other 40 percent would be pooled and subject to the average mill rate in the seven-county area. The Minnesota Supreme Court has just upheld the constitutionality of this law, and in the opinion of the Court it was said the effect of this system is to reallocate taxes in direct relation to need and in inverse relation to fiscal capacity.

The Committee also considered a proposal made by representatives of Michigan Wisconsin Pipe Line Company to create a special impact taxing district to include any county lying within a certain radius from an energy conversion facility. The plant, including machinery and equipment, would be assessed within the situs county but each county in the impact district would be assigned a designated percentage of the assessed value. Each county would add its assigned portion of the facility's assessed value to its existing tax base and boards of county commissioners would serve as county impact commissions and would distribute funds pursuant to budgets presented by the various political subdivisions.

The members of the Committee considered a number of problems which would result if special districts were created for coal development plants. It was suggested that the Legislature define the criteria to be used in drawing the boundaries of the special taxing districts, and it was noted that the criteria used for the first plant may very well not work when applied to subsequent plants. Exceptions would have to be drafted into the law to exclude areas within the radius of the plant but inaccessible because of physical barriers such as a body of water. The special district proposal would require impact commissions for each county, and a representative of the North Dakota Association of Counties appeared and testified that counties are not equipped to handle these responsibilities. Perhaps the most serious drawback to the district approach is that any formula created by statute has an uncertain relationship to actual impact costs. And although the Minnesota decision would indicate the states have the power to assign valuations outside of the situs county, the question has never been judicially considered in North Dakota. Because mill levies respond to the tax base, the more any taxing proposal is tied to the local tax base the greater the disparities in tax treatment among the various taxing districts in the State. Any proposal based on the property tax would have a dramatic impact on the State's equalization program for schools because of the effect the assessed valuation of a coal gasification plant, including machinery and equipment, would have on the tax base of the school district and county in which it was located.

During the course of discussion of the taxation of coal gasification plants, attention was called to the taxation of large electrical generating plants. It was noted that a number of plants larger than any now in existence are either under construction or in the planning stages. The Committee reviewed the present statutes on the taxation of large electrical generating plants. There are two classifications of such plants for purposes of taxation, and the distinction is made based upon ownership — those owned by investor-owned utility companies are taxed in one way and those owned by nonprofit cooperative corporations are taxed in another way.

The electrical generating plants of investor-owned utility companies are assessed by the State Board of Equalization and the local taxing districts in which the plants are located determine the property taxes to be extended against the property within such districts according to the mill levies levied against all other property in such districts. The property taxes are in addition to all other taxes paid by corporations.

Prior to 1965, all generating plants of nonprofit cooperative corporations were taxed according to the provisions of Chapter 57-33 of the North Dakota Century Code, which is the general law providing for the taxation of rural electric cooperatives. As the result of an interim study, cooperative generating plants with a capacity of more than 100,000 kilowatts are now taxed according to the provisions of Chapter 57-33.1. Although the rate of the tax is the same, two percent of gross receipts, the tax for the larger plants is a franchise tax rather than a property tax and is thus applied to the entire gross receipts, including sales out of State. The taxes imposed by Chapter 57-33.1 are in lieu of all other taxes on the plant, and only the land upon which the plant is located is subject to local assessment for ad valorem taxation purposes.

The revenues from large cooperative generating plants are distributed according to a statutory formula between the county and the state general fund. The county share is then distributed as follows: 15 percent to the incorporated cities based upon population, 40 percent to the county general fund, and 45 percent to the school districts based upon average daily attendance. It was noted that the interim Committee which originally drafted the bill which became Chapter 57-33.1 recommended that all large electrical generating plants be treated equally, but that the bill was amended prior to passage to include only such plants which are owned or operated by nonprofit cooperative corporations.

The Committee recommends a bill to provide for a tax for the privilege of processing or converting coal into synthetic natural gas or electrical power in

a coal development plant, which is defined to include facilities for the processing or conversion of coal from its natural form into synthetic natural gas or electrical power which normally uses or is designed to use over 2 million tons of coal per year. The 2 million ton limitation is placed in this definition to exclude those existing plants which were constructed under existing laws and which substantially serve the needs of citizens of this State. It was also contended that some existing plants are not economically competitive with the larger plants now under construction and will eventually be phased out. In order to avoid including any existing plants as the result of the construction of new units which can operate independently of the existing units, the bill contains language providing that each single electrical energy generation unit shall be considered a separate plant.

The Committee recommends a rate of 10 cents on each 1,000 cubic feet of synthetic natural gas produced and a rate of three-tenths of one mill on each kilowatt hour of electricity produced. The rate on coal gasification would produce approximately the same amount of revenue as would the machinery and equipment of such a plant if such personal property were subject to the same effective tax rate on the investment for such property as one of the larger public utility companies is presently taxed on the valuation of its property in the State. The rate for electrical generation plants will result in approximately the same revenue as an investor-owned utility is now paying on the personal property of such a plant. Because coal gasification is more efficient than electrical generation, the rate recommended by the Committee for electrical generation is less than the rate on coal gasification. The revenue generated from this tax on a coal gasification plant producing 91 billion cubic feet of gas a year would be \$9.1 million, and the revenue generated on a 550 megawatt electrical generating plant, which produces about 4 billion kilowatt hours per year, would be \$1.2 million per year.

The bill recommended by the Committee provides that the taxes would apply to the gas or electricity sold, thus exempting from the tax the gas or electricity used in the process. The bill places the burden on the producer of gas or electricity to measure production or generation and to keep proper records. Most of the administrative provisions in the bill are similar to the provisions found in the oil and gas gross production tax law.

The taxes imposed by the bill would be in lieu of all ad valorem personal property taxes. The effect of this language would be to exempt the personal property of investor-owned utility plants which are now subject to personal property taxes. The taxes imposed would also be in lieu of the taxes imposed by Chapters 57-33 and 57-33.1 for cooperative electrical generating plants.

The revenue generated would be deposited in the State's general fund. It is the intent of the Committee that impact moneys be raised by the taxes imposed by this bill. It should be noted that the real property tax base of a coal development plant, including the land, buildings, and permanent structures, would remain taxable as real property in the county and political subdivisions of situs of each plant.

State Impact Aid Program

The bill imposing a privilege tax on coal development plants retains the property tax base on the real estate as defined by law in the counties and political subdivisions of situs. Based on experience with the taxation of public utility and other similar industrial plants, it has been estimated that approximately 15 percent of the valuation of a coal gasification plant will represent real property. That portion will then be valuable for the raising of local moneys through the usual property tax procedures.

Woodward-Envicon, Inc., the firm which is preparing the environmental impact statement for the Michigan Wisconsin Pipe Line Company, has estimated that the impact costs on local governments will be approximately \$7 million to \$8 million during the period of construction of the first coal gasification plant. It has also been projected that 80 percent of the impact will occur within a 30-mile radius of the plant.

Based upon the information furnished to the Committee, it appears there are two major problems concerning impact. The first of these is the development of a program to get the funds where they are needed, regardless of whether the unit of government happens to be in the same political subdivision as the plant generating the impact costs. The second major problem concerns timing. One of the major problems encountered during the ABM construction in the Langdon area concerned the period of time between the impact and the receipt of funds. It was recognized that, although the counties and other political subdivisions which have plants within their boundaries will have a substantial increase in their tax bases, there will be a period of time prior to the collection of any taxes on this property when the local governments will require assistance. To meet this need, the Michigan Wisconsin Pipe Line Company has offered to prepay taxes in regard to its proposed plant if the State enacts suitable legislation permitting this and providing that such taxes serve as a credit against future taxes.

The Committee recommends a bill to provide for a state program to reimburse political subdivisions for impact expenditures resulting from coal development. The bill contains a statement of

legislative intent that reimbursement be provided for the purpose of meeting certain extraordinary operating and capital improvement expenditures necessitated by the impact, particularly population growth, resulting from coal development and the allied industries incidental to such development. The impact program would be limited to impacts resulting from coal development, which is defined to include electrical generation, coal gasification, coal liquefaction, and the manufacture of fertilizer from coal. All political subdivisions which have the authority to levy taxes which could demonstrate actual or anticipated extraordinary expenditures caused by coal development would be eligible for impact grants.

In order to provide maximum efficiency in the administration of this program, the Committee recommends that existing state agencies be used to make recommendations in the areas of their expertise. Applications from school districts would be filed with the Superintendent of Public Instruction, applications for road and highways would be filed with the State Highway Commissioner, applications for law enforcement funds would be filed with the Combined Law Enforcement Council, applications for public parks and recreation purposes would be filed with the Outdoor Recreation Agency, and applications for funds for public hospitals, nursing homes, water and waste treatment, and ambulance services would be filed with the State Health Department. Applications which would not fall within the above-mentioned five state agencies' functions would be submitted to the Attorney General, who would decide which state agency should make the recommendation based upon the functions imposed by law upon each such agency. Each agency would promulgate rules and regulations to be used in making impact grants. The amount of revenue political subdivisions received from taxes on the real property or distribution formulas related to the coal development industry would be taken into consideration in making impact grants.

Each agency would have 60 days to make recommendations on impact grants to a special Legislative Council Coal Development Impact Committee, which would make final decisions on grant applications. The Coal Development Impact Committee would consist of five members of the Legislative Assembly appointed by the Chairman of the Legislative Council. The Coal Development Impact Committee would be subject to the same rules and provisions as are other Legislative Council committees.

There is some question as to whether a legislative review committee violates the doctrine of separation of powers. The State of Alaska has a Special Legislative Oil Development Impact Review Committee which approves grants to local govern-

ments which have been made by an Executive Branch agency. The Alaska law was enacted in 1974 and is being challenged by the Governor of Alaska before the Supreme Court of that state on the constitutional issue of separation of powers. Until that case is decided, no precedents of a similar kind are known to exist.

The Committee members recognize that there are many unanswered questions concerning coal development impact. Time did not permit the in-depth analysis which would be required to perfect a comprehensive program to meet the demands of all of the possible contingencies in this area. However, the members of the Committee believe that the bill they recommend will serve to develop a basic program upon which can be built a more refined program to meet the needs of this development.

The members of the Committee also recognize that an appropriation will be required to fund the impact grant program proposed in the bill. However, it was recognized that more accurate information should be available by the time this matter is considered during the Legislative Session and that the amount to be appropriated can be decided at that time. The Committee considered the possibility of providing for the prepayment of taxes by coal development companies. However, it was decided by the Committee that it would be preferable to appropriate moneys out of the general fund for initial impact costs and that this money would later be repaid through the taxes on the industry recommended by the Committee. It was also recognized that the severance tax on coal, if enacted in 1975 and effective July first of that year, will bring in some revenue to the general fund during the first biennial period of the special impact aid program.

TAXATION ON INDIAN RESERVATIONS

House Concurrent Resolution No. 3090 directed the Legislative Council to study the questions of taxation and jurisdiction on Indian reservations. Because of a number of United States Supreme Court decisions and rulings in other states that the authority of the states to tax Indians on reservations is very limited, a bill was introduced in 1973 which would have given the State Treasurer and the State Tax Commissioner the authority to enter contracts with the Indian tribes to collect various taxes on reservations and to pay over to the tribes for the tribal taxes collected. The idea behind such legislation is that, because the State does not have jurisdiction on the reservations to tax Indian residents and because the Indian tribes have the authority to impose their own taxes but do not have the taxation machinery to collect such taxes, an agreement under which the State collects both state and tribal taxes should benefit both. The bill in-

troduced in 1973, House Bill No. 1536, would have followed the example of the State of South Dakota, which has been collecting Indian and state taxes under a similar agreement and then reimbursing the tribes for their share of the taxes. Apportionment of the tax is then made by deciding what percentage of customers are Indian and what percentage are non-Indian. As the state and tribal tax rates are identical, the taxes imposed on customers are uniform and it is not necessary for the retailer to make a decision in each case whether his customer is an Indian or not.

On July 12, 1973, the North Dakota Supreme Court, in the case of **White Eagle v. Dorgan**, resolved any doubts which may have remained concerning the lack of state jurisdiction on Indian reservations. The Court said that, in the absence of an express enactment by the Congress providing that state law shall apply, the State may not assume jurisdiction to impose state income taxes on Indians living on a reservation on income earned on the reservation without specific agreement of the tribal members conferring jurisdiction on the state.

There was a time when the State Legislature could have assumed jurisdiction over residents on Indian reservations, including the power of taxation. In 1953 Congress enacted legislation which said, in effect, that regardless of what any Enabling Act said, the United States consented to let the States assume criminal and civil jurisdiction over Indians, if the state constitutions and statutes were amended as necessary. North Dakota's Constitution was amended in 1958 to permit the Legislature to accept jurisdiction, but the necessary legislation was never passed, although in 1963 statutes were enacted allowing for state jurisdiction on reservations if accepted by the Indians. The Indian tribes in North Dakota have accepted state jurisdiction in very few matters, and needless to say, taxation is not one of them. In 1968, Congress withdrew the authority for the states to assume jurisdiction without the consent of the Indians.

The options available to the State are limited. The State can enact legislation permitting agreements for the collection of tribal taxes or the State can enact legislation to enforce measures to control bootlegging of taxable commodities from reservations. The latter alternative, however, will do nothing about the unequal tax treatment which would remain because non-Indian merchants on the reservations are under the jurisdiction of the State and must collect sales taxes from non-Indian customers, while Indian merchants need not collect such taxes. Another alternative would be to urge the tribes to accept state jurisdiction, but this is not likely to be acceptable at this time. Still another alternative would be to urge Congress to grant the states authority to collect state taxes from all

persons on reservations. A fifth alternative would be for the State to do nothing. But if nothing is done, the tax-free islands will remain and it will be necessary for merchants to distinguish their Indian from their non-Indian customers for sales tax purposes. Another danger exists that, should the State not enter agreements for the cooperative collection of taxes, the tribes may enact their own taxes independent of the State and even further place non-Indian merchants in a noncompetitive position.

The Committee recommends a bill to authorize agreements between the State Tax Commissioner, the State Treasurer, and the various recognized Indian tribes in North Dakota for the collection of certain taxes enacted pursuant to tribal ordinances. The bill provides that the authority would exist to collect taxes imposed by the tribes that are similar in nature and degree, as well as rates, to the taxes imposed by the State. The bill also states that it is the intent of the Legislature to discourage the creation of tax-free islands and to make it possible for both Indians and non-Indians on reservations to pay taxes in equal measure as nearly as possible with those living off of the reservations.

Because there is a boundary dispute involving one reservation in North Dakota, it was contended during the discussion of House Bill No. 1536 that this legislation would be interpreted to be a recognition of existing boundaries. Not wishing to get involved in this dispute, the Committee included a provision that this legislation is not a recognition of boundaries for purposes other than the collection and administration of taxes. A letter received from an attorney representing some merchants in the disputed territory said he believed this language would meet some of the concerns of the affected persons.

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The minutes of the standing committee which considered House Bill No. 1536 indicate that there was concern that legislation of this kind would result in additional taxes for non-Indian merchants. To clear up any questions on this issue, the bill contains language specifically providing that nothing in the

bill shall be interpreted to authorize the collection of any taxes which result in the duplication of taxes, and that the authority granted by the bill applies only to taxes imposed which the State does not have the jurisdiction to impose.

The bill provides that the agreements between the State and the tribes would provide for the apportionment of any revenues collected between the State and the tribes and for the retention by the State of collection and administrative costs. The tribal share of the revenues collected would be held in trust by the State Treasurer and then transferred to the tribes as provided in the agreements. The collection and administrative costs would be deposited in the state general fund, subject to appropriation by the Legislature. The State's share of the taxes collected would be deposited in the general fund or in the appropriate special fund, depending upon the tax collected.

TAX RELIEF FOR BEGINNING FARMERS AND RANCHERS

House Concurrent Resolution No. 3065 directed the Legislative Council to conduct a study to determine the feasibility of granting some form of tax relief to beginning farmers and ranchers. Although the resolution did not limit the study to any particular type of tax, it noted the fact that North Dakota currently provides tax exemptions for new industries in the form of income and ad valorem tax relief for a period of up to five years.

During both the 1971 and 1973 Legislative Sessions, bills were introduced to provide that farms and ranches would be eligible for the tax exemptions provided in Chapter 40-57.1 of the North Dakota Century Code, which is the chapter entitled "Tax Exemptions for New Industries". During the 1971 Session, House Bill No. 1124 passed the House by a vote of 73 to 23. The Senate adopted an amendment which would have required that the exemptions would apply only to "new farm entities" and that the owners would have been required to live on the premises. The Senate then killed the bill by a vote of 17 to 27.

House Bill No. 1256 was introduced in 1973 and would have accomplished the same thing as the 1971 bill as originally introduced. The standing House Committee on Finance and Taxation appointed a subcommittee to consider this legislation. The subcommittee concentrated its efforts on the sales tax and reported three major problems in attempting to provide tax relief to beginning farmers:

1. There is a problem of defining a farmer or rancher.
2. There is an additional problem of defining a "beginning" farmer or rancher.

3. There is a problem determining which items should be exempt from the sales tax.

After determining that there would not be sufficient time to answer these questions during the Session, the standing House Committee on Finance and Taxation voted to indefinitely postpone House Bill No. 1256 in favor of an interim study of this matter.

As noted in the study resolution, North Dakota presently provides a number of tax incentives for new businesses and industries. A leasehold granted by a city or county for a project under the Municipal Industrial Development Act is classified as personal property for a period of five years and is exempt from ad valorem taxation for such period. Corporations which have been granted property tax exemptions are exempted from state income taxes for up to five years upon application to the State Tax Commissioner.

The 1969 Legislative Assembly enacted a law which grants property and income tax exemptions to new industries. Cities or counties may grant partial or complete exemption from ad valorem taxation after receiving the approval of the State Board of Equalization. The State Board may also approve exemptions from state income taxes for a period of five years provided an application is made by the municipality on behalf of the project operator. The ad valorem tax exemption applies only to the valuation over and above the assessed valuation placed upon the property for the last assessment period before the date of the application for tax exemption.

North Dakota law also provides for a corporate income tax credit for certain new industries. In order to qualify for this credit, a corporation must have been incorporated after January 1, 1969, and cannot be a reorganization of a previously existing corporation. Foreign corporations qualifying for this credit must have been first granted a certificate of authority to transact business in this State after January 1, 1969. Corporations which are receiving any property or income tax exemption under either the Municipal Industrial Development Act or the law providing tax exemptions for new industries are specifically excluded from receiving this credit. The credit, which is provided for in Section 57-38-30.1 of the North Dakota Century Code, is equal to one percent of the gross expenditures for wages and salaries in the State during each of the first three years and one-half of one percent for the fourth and fifth years. This credit for new industry probably provides very little, if any, potential tax benefit for farmers and ranchers in light of the prohibition on corporate farming, except for cooperative corporations, found in Chapter 10-06 of the Code.

The 1973 Legislative Assembly passed a bill which provides a real property tax exemption for improvements to commercial buildings and structures. An improvement is defined to include the renovation, remodeling, or alteration, but not the replacement, of an existing building or structure for use for commercial purposes. The exemption is for three years and applies only to that part of the valuation resulting from the improvements which is over and above the previous assessment.

Any discussion of tax incentives revolves around the three major state and local taxes — income, sales, and property taxes. No matter which of these three kinds of taxes is under consideration, there is a problem of definitions. Senate Bill No. 2318, which clarified the farm structure tax exemption, defined a "farmer" as an individual who normally devotes the major portion of his time to the activities of producing products of the soil, poultry, livestock, or dairy farming in such products' unmanufactured state and who normally receives not less than 50 percent of his annual net income from any one or more of the foregoing activities. That legislation also defined a "farm" to mean a single tract or contiguous tracts of agricultural land containing a minimum of 10 acres and which normally provides a farmer, who is actually farming the land or engaged in the raising of livestock or other similar operations normally associated with farming and ranching, with not less than 50 percent of his annual net income.

Thus, whether or not these definitions were used to identify the persons and properties intended to be covered by any new proposal to grant exemptions to beginning farmers and ranchers, the question remains as to how to adequately define a "beginning" farmer or rancher. Unlike a new business or industry, nearly all "new" agricultural operations are actually continuations of existing enterprises under new ownership. In order to protect the tax base of political subdivisions, the statutes providing property tax exemptions for new industries specifically provide that the exemption shall only apply to the valuation over and above the assessed valuation placed upon the property for the last assessment period. Because farm structures and improvements are already exempt from ad valorem taxation, the granting of property tax exemptions to farm and ranch real property must of necessity remove a portion of the existing tax base for the period of the exemption, unless, of course, the property was previously tax exempt for other reasons.

In addition, there is some question whether the Legislative Assembly has the authority to grant a real estate exemption for land except for the property specifically exempted in Section 176 of the North Dakota Constitution. That constitutional provision grants the Legislature the power to

exempt personal property from taxation, and for this purpose it defines personal property to include buildings and improvements. In addition, Section 176 specifically provides that certain governmental property and certain property used exclusively for educational, religious, or charitable purposes shall be exempt. In an opinion dated July 29, 1969, the Attorney General noted that there is no specific constitutional authority for the Legislature to exempt real property from taxation and that a land exemption could be declared unconstitutional in view of the provisions of Section 176.

The Committee considered a wide variety of suggestions and proposals, such as elimination of the business privilege tax for beginning farmers and ranchers, the exemption from sales and use taxes on new machinery and equipment for such persons, and various circuit-breaker tax relief plans. Under the circuit-breaker proposals, an eligible taxpayer would be entitled to a credit against his state income tax liability equal to the amount by which the property taxes on his homestead or farm exceeded a certain percentage of his total income. Under some of these proposals, if the amount of the credit exceeded the amount of income taxes due, the claimant would be entitled to a refund.

The Committee invited representatives of farm organizations to testify on this matter and to make suggestions. The representatives of these organizations testified to the effect that the cost of going into farming, and particularly interest rates, deters many from entering farming. In fact, information presented to the Committee indicated that interest constitutes about seven times the burden of property taxes. One representative of a farm organization testified that if the members of the Committee were really interested in helping beginning farmers and ranchers, they should support a proposal to permit corporate farming. Others testified that some type of new farm credit program would be of more assistance to beginning farmers and ranchers than any tax relief that might be granted.

The members of the Committee expressed the view that they were interested in assisting young people get started in farming and ranching, but that the evidence indicated that tax relief was not the answer. They concluded that credit, not taxes, is the major obstacle to new farm and ranch operations. The Committee concluded that further consideration should be given to some type of low interest loan program by the appropriate groups and committees. Because of the press of other business, the Committee's time on this subject was limited. Although the Committee makes no recommendation for legislation on this matter, a number of bills were drafted on the circuit-breaker concept which may be introduced by individual sponsors.

ESTATE TAX

The Chairman of the Legislative Council directed the Committee to review the North Dakota estate tax and to give consideration to providing a basic exemption similar to the \$60,000 exemption provided by the Federal Government. This matter arose because of the effects on inflation on the average estate in North Dakota.

Under the current law in North Dakota, there is no minimum filing requirement for estate tax purposes. There is an exemption of \$20,000 or one-half of the adjusted gross estate, whichever is greater, for the surviving spouse. In addition, there is an exemption for each child under the age of 21 of \$5,000 and an exclusion from the estate of the first \$25,000 of life insurance proceeds. The estate tax rates range from 2 percent of the first \$25,000 of the net taxable estate to 23 percent of the excess over \$1.5 million of the net taxable estate.

In fiscal year 1974, there were 4,954 estate tax returns filed. The total tax assessed was \$3.8 million, of which \$2.5 million represented the county and city share and \$1.3 million was deposited in the State's general fund. The statutory allocation formula provides that 35 percent of the estate tax is deposited in the state general fund and 65 percent is distributed to the county. If any part of the decedent's property is located in a city, the city shares in the county share on a proportionate basis determined by a formula which uses the respective mill levies of the city and county in which the property is located.

Testimony before the Committee indicated that if the State had a \$60,000 basic exemption similar to that provided by the federal law, about 3,000 of the estates in 1974 would not have had a filing requirement. Of the remaining returns, only 550 would have been taxable and the resulting revenue would have been \$1.6 million. If the State were to have a basic exemption of \$100,000, only 244 returns would have been taxable in 1974 for taxes due of about \$1 million.

The members of the Committee noted that, if the estate tax law were amended to provide a \$60,000 exemption, the revenue generated would total only about \$1.6 million per year, and the county and city share would be slightly over \$1 million. The State's share would be less than \$600,000 per year. Representatives of the cities and counties testified that local governments need the revenue they are now receiving from the estate tax. Others pointed out that, as the estate tax paid to the State is deductible in determining the federal tax due, the reduction or elimination of the state estate tax increases the amount of federal estate taxes due. However, the members of the Committee expressed the view that something should be done to relieve

small estates from the burden of the tax, and that if a basic exemption were enacted, the remaining revenue would not be sufficient to justify the continuation of the estate tax. Therefore, the Committee recommends a bill to repeal the estate tax.

ASSESSMENT OF PROPERTY

Senate Concurrent Resolution No. 4039 directed the Legislative Council to study the laws, practices, and procedures involved and concerned with the sales, market, and productivity study, formerly called the sales ratio study. The Committee heard testimony from Tax Department officials which indicated that there is a problem in obtaining sufficient information upon which to conduct proper

studies since the discontinuance of federal revenue stamps. The testimony also indicated that there has been organized resistance to providing sales information for use in conducting the study.

Because of the demands of other assignments given to the Committee, a thorough review of this subject was not possible. However, the members of the Committee were aware of the study conducted by the Committee on Education "B" and the efforts of that Committee to find a method of assuring the uniform assessment of property in order to strengthen the equalization program for schools. Therefore, the Committee makes no recommendations on this subject.

INDUSTRY AND BUSINESS "A"

The Committee on Industry and Business "A" was assigned two study resolutions. Senate Concurrent Resolution No. 4023 directed a study to be conducted of the North Dakota workmen's compensation laws and program, its administration, related safety programs, and the workmen's compensation reserve fund, and House Concurrent Resolution No. 3074 directed a study of the feasibility of state implementation of the Federal Occupational Safety and Health Act. In addition to the studies directed by resolution, the Committee was authorized by the Chairman of the Legislative Council to consider the interest rate situation faced by North Dakota financial institutions.

The members of the Committee on Industry and Business "A" were Senators Richard Goldberg, Chairman, Emil Kautzmann, and Duane Mutch; and Representatives John Gengler, Brynhild Haugland, Harley Kingsbury, Richard Kloubec, Eugene Laske, Edward Metzger, Michael Timm, and Francis Weber.

The report of the Committee on Industry and Business "A" was submitted to the Legislative Council at the biennial meeting of the Council held at Bismarck. The report and recommended legislation were adopted for submission to the Forty-fourth Legislative Assembly by the Legislative Council in November 1974.

WORKMEN'S COMPENSATION STUDY

The North Dakota Workmen's Compensation Act was enacted in 1919 for the purpose of assuring an employee injured in the course of employment prompt payment of benefits regardless of fault and to the exclusion of other civil actions and remedies. The Act is administered by the Workmen's Compensation Bureau and an employer subject to the Act must be insured through the State Workmen's Compensation Fund. The Bureau administers the Fund, determines premium rates for various employment classifications, and assesses and collects premiums.

The study directed by Senate Concurrent Resolution No. 4023 involved the entire workmen's compensation program and was divided into three subject areas — the status of the Workmen's Compensation Fund; an examination of the exclusive fund concept; and program coverage.

Status of the Fund

The Workmen's Compensation Fund is established to provide for the expenses of ad-

ministration of the Workmen's Compensation Bureau, payment of workmen's compensation, and maintenance of adequate reserves and surplus to maintain solvency.

The actuarial consulting firm for the Workmen's Compensation Bureau, Watson-Hill Co., was requested to provide information on the Fund. Watson-Hill Co. emphasized that the legislative mandate in establishing the workmen's compensation program was that individuals injured during their employment would be provided "sure and certain" relief through the maintenance of an adequate reserve to meet estimates of future outstanding liabilities. When the Fund was first established, a statutory reserve was created through designation of 10 percent of the premium collections until a reserve of \$50,000 was attained and then designation of five percent of the premium collections until a sufficient reserve was determined to exist in 1961. In addition to the present statutory reserve of \$2.2 million, allocated reserves are maintained for liabilities, contingencies, and claims, the amount of which depends upon estimates of the nature and extent of the compensable injury to every claimant.

Watson-Hill Co. indicated that sufficient reserves exist within the Workmen's Compensation Fund, but favored reinstatement of the statutory reserve allocations for a period of time in order to increase the reserve to cover increased benefit levels and offset the effects of inflation on program operations.

Exclusive fund concept

Since its inception in 1919, the workmen's compensation program has operated under an exclusive fund concept where employers subject to the Act are required to obtain workmen's compensation coverage through the Workmen's Compensation Fund. Six states have exclusive workmen's compensation funds, 28 states operate under optional workmen's compensation fund systems where employers may obtain workmen's compensation coverage either by self-insurance or through a state fund or private insurance carriers, and the remaining states rely exclusively on self-insurance or private insurance carriers.

Representatives of the American Mutual Insurance Alliance and the American Insurance Association were invited to present testimony concerning the feasibility of initiating any change in the present system in North Dakota. Both organizations favored the establishment of an op-

tional fund system to allow the employer the choice of obtaining workmen's compensation coverage through either private insurance carriers or the Workmen's Compensation Fund and indicated that change from the exclusive fund concept to an optional fund system would introduce competition into the program so as to allow employers to choose the best method of providing workmen's compensation coverage, whether through the State Fund or through private carriers with their various programs.

In addition to insurance industry representatives, officials of the Oregon and Colorado workmen's compensation funds were invited to describe the operation of their optional fund systems.

In 1965 Oregon changed from an exclusive fund concept to an optional fund system allowing employers to self-insure or obtain workmen's compensation coverage through either the State Accident Insurance Fund or private carriers. The Oregon State Accident Insurance Fund reported the changeover from an exclusive fund concept to an optional fund system resulted in increased cost in providing and obtaining workmen's compensation coverage due to the additional expense factors not present under an exclusive fund such as acquisition costs, regulatory costs, and profits.

The effect from the additional operational costs arising from an optional fund system is the influence on the workmen's compensation premium level. Base rates are determined from the experience of all insurance carriers operating within Oregon. Reports on premiums, payrolls, and losses, all by employment classification, are sent to the National Council on Compensation Insurance which computes employment classification base rate levels and recommends their adoption by the carriers. Any differences in net cost to employers arise from the amount of dividends returned to the policyholders from the individual carriers.

The workmen's compensation base rate (premium dollar) comprises two items — delivery system costs and insurance system costs. Delivery system costs include workmen's compensation benefits paid to injured employees, related medical and legal costs incurred through final disposition of the claim, and operation of an appeals system. Insurance system costs are the costs of operating the insurance program. Prior to the changeover in 1965, the portion of the workmen's compensation base rate in Oregon charged to delivery system costs was 90 percent and the portion charged to insurance system costs was 10 percent, while after the changeover the portion of the base rate intended to be charged to delivery system costs is 58.8 percent and the portion intended to cover insurance system costs is 41.2 percent.

The actual experience of the Oregon State Accident Insurance Fund since the changeover is a 71.8 percent return of the premium dollar in benefits to injured employees, a 16.1 percent return as dividends to policyholders, and a 12.1 percent retention to cover operating costs. Over the same period of time, private insurance carriers returned 68.4 percent of the premium dollar as benefits, returned 8.4 percent as dividends to policyholders, and retained 23.2 percent to cover operating costs.

Another factor in the additional operational costs caused by the changeover from an exclusive fund concept to an optional fund system involved the establishment of separate agencies to administer the workmen's compensation program and to provide workmen's compensation coverage. In Oregon, the Workmen's Compensation Board administers the workmen's compensation law and the State Accident Insurance Fund operates as an insurance company in providing workmen's compensation coverage.

Of the states within the midwest region having employment classifications and conditions similar to North Dakota, Colorado had the only long-time established optional fund system. The Colorado State Compensation Insurance Fund was established with the inception of the Colorado workmen's compensation program in 1915 for the primary purpose of providing high-risk employers the opportunity to obtain the required workmen's compensation coverage where private insurance carriers may refuse to provide coverage.

The method for determining workmen's compensation base rates in Colorado is substantially identical to the method used in Oregon. Reports on premiums, payrolls, and losses, all by employment classification, are sent to the National Council from all carriers operating within Colorado. Employment classification base rates are computed by the National Council and are recommended for adoption within Colorado. However, in contrast to Oregon, any differences in net cost to employers arise from the use of a premium discount plan by the State Compensation Insurance Fund.

In Colorado, the workmen's compensation base rate is intended to provide 60 percent of the premium for losses and 40 percent of the premium for expenses and administration. The actual experience of the Colorado State Compensation Insurance Fund for the period of 1968-72 indicated that 72.7 percent of the premium dollar is returned in benefits to injured employees, 8.4 percent is returned as dividends to policyholders, 10.4 percent is retained to cover administrative expenses, and 8.5 percent is retained as reserves. Over the same period of time private insurance carriers returned 61 percent of the premium dollar as benefits to injured employees.

As was the case in Oregon, two agencies are involved in workmen's compensation in Colorado — the Colorado State Compensation Insurance Fund underwrites workmen's compensation insurance, while the Colorado Division of Labor administers the workmen's compensation program.

Substantial reference was made to the normal 60-40 assumption where private insurance carriers are allowed to write workmen's compensation coverage in optional fund states. This assumption is that out of each workmen's compensation premium dollar collected, 60 percent is returned in the form of benefits to injured employees and 40 percent is retained by the insurer to cover administrative costs, provide profits, and allow some dividends to the employer-policyholder. This assumption was generally supported by the experience of the Oregon State Accident Insurance Fund and the Colorado State Compensation Insurance Fund. In contrast to this assumption was the experience of the North Dakota Workmen's Compensation Fund. Since the inception of the North Dakota workmen's compensation program in 1919, \$1.07 in benefits to injured employees has been provided for every \$1.00 collected in workmen's compensation premiums, and for the last biennium, the administrative cost of the North Dakota Workmen's Compensation Fund was 7.8 percent of premium collections. While the amount of benefits along with administrative costs exceed premium collections, the difference is made up through the use of income earned on investment of the reserves maintained within the Fund.

The effects of authorizing private insurance carriers to write workmen's compensation insurance in North Dakota are difficult to predict, but indications are that administrative costs of operating the North Dakota Workmen's Compensation Fund would rise in comparison to the amount of premiums collected. While competition would become an aspect of operation of the Fund, the amount of total workmen's compensation premiums available in North Dakota is relatively small in comparison to other

states, and the Committee believes introduction of a competitive factor would not result in further efficiency in the existing system.

Program Coverage

In the Occupational Safety and Health Act of 1970, the United States Congress declared that:

“the vast majority of American workers, and their families, are dependent on workmen's compensation for their basic economic security in the event such workers suffer disabling injury or death in the course of their employment. . .(but). . .in recent years serious questions have been raised concerning the fairness and adequacy of present workmen's compensation laws. . .”

For these reasons, Congress established the National Commission on State Workmen's Compensation Laws to evaluate state workmen's compensation laws to determine if such laws provide an adequate, prompt, and equitable system of compensation.

Based upon its evaluation of state workmen's compensation programs, the National Commission issued a report containing 84 recommendations for a modern workmen's compensation program. All 84 recommendations were reviewed by the Committee and compared with the existing North Dakota workmen's compensation program. In that a very broad area was involved, with a suggested timetable for full compliance with all of the recommendations extending to 1981, primary evaluation and consideration of the report of the National Commission was concentrated on 19 recommendations described by the National Commission as essential for compliance by the states by July 1, 1975.

The following table presents a comparison between the 19 essential recommendations with the existing provisions of the North Dakota workmen's compensation program:

NATIONAL COMMISSION RECOMMENDATION

Coverage by workmen's compensation laws be compulsory and no waivers be permitted.

Employers not be exempted from workmen's compensation coverage because of the number of their employees.

EXISTING PROGRAM

It is unlawful for any person to employ anyone in a hazardous employment without securing workmen's compensation coverage and any agreement by the employee to waive his rights under workmen's compensation is prohibited.

No exemptions to workmen's compensation coverage are based upon the number of employees.

NATIONAL COMMISSION RECOMMENDATION

A two-stage approach to the coverage of farm workers. First, as of July 1, 1973, each agricultural employer who has an annual payroll that in total exceeds \$1,000 be required to provide workmen's compensation coverage to all of his employees. Second, as of July 1, 1975, farm workers be covered on the same basis as all other employees.

As of July 1, 1975, household workers be covered under workmen's compensation at least to the extent they are covered by Social Security.

Workmen's compensation coverage be mandatory for all government employees.

There be no exemptions for any class of employees, such as professional athletes or employees of charitable organizations.

All states provide full coverage for work-related diseases.

There be no statutory limits of time or dollar amount for medical care or physical rehabilitation services for any work-related impairment.

The right to medical and physical rehabilitation benefits not terminate by the mere passage of time.

An employee or his survivor be given the choice of filing a workmen's compensation claim in the State where the injury or death occurred, or where the employment was principally localized, or where the employee was hired.

Subject to the State's maximum weekly benefit, temporary total disability benefits be at least 66 $\frac{2}{3}$ percent of the worker's gross weekly wage.

EXISTING PROGRAM

Agricultural employment is exempted from compulsory coverage of workmen's compensation.

Domestic service employees and employees whose employment is both casual and not in the course of the business of the employer are exempted from compulsory coverage of workmen's compensation.

All employees of the State and its political subdivisions, including elective and appointed officials, are covered by mandatory workmen's compensation coverage.

Clergymen and employees of religious organizations engaged in the operation, maintenance, and conduct of a place of worship are exempted from compulsory coverage of workmen's compensation.

Any disease which is fairly traceable to the employment, except ordinary diseases of life to which the general public is exposed unless the disease follows as an accident to, and its inception is caused by employment, is fully compensable under workmen's compensation coverage.

During the period of disability, the employee is furnished such medical, surgical, and hospital service and supplies as the injury may require. For permanent partial disability, the workmen's compensation fund provides such equipment, training, or education as may be necessary to rehabilitate the individual. However, no compensation is paid for a disability of less than five days.

Same as above.

The Workmen's Compensation Bureau is authorized to enter into agreements with workmen's compensation agencies of other states relating to conflicts of jurisdiction and the rights of an injured employee shall be determined pursuant to such agreements.

Temporary total disability compensation equals 60 percent of the average weekly wage in the State, and an additional sum of \$5 per week for each dependent child is paid to the disabled employee, however, the combined compensation and dependency award may not exceed the net wage, after deductions for taxes, earned by the claimant at the time of the injury.

NATIONAL COMMISSION RECOMMENDATION

As of July 1, 1973, the maximum weekly benefit for temporary total disability be at least 66 $\frac{2}{3}$ percent of the state's average weekly wage, and as of July 1, 1975, the maximum be at least 100 percent of the State's average weekly wage.

Temporary or permanent total disability benefits be paid for the duration of the worker's disability, or for life, without any limitations as to dollar amount or time.

Subject to the State's maximum weekly benefit, permanent total disability benefits be at least 66 $\frac{2}{3}$ percent of the worker's gross weekly wage.

As of July 1, 1973, the maximum weekly benefit for permanent total disability be at least 66 $\frac{2}{3}$ percent of the State's average weekly wage, and as of July 1, 1975, the maximum be at least 100 percent of the State's average weekly wage.

The definition of permanent total disability used in most states be retained (permanent impairment that makes it impossible for a worker to engage in any substantial gainful activity for a prolonged period). However, in those few states which permit the payment of permanent total disability benefits to workers who retain substantial earning capacity, our benefit proposals be applicable only to those cases which meet the test of permanent total disability used in most states.

Subject to the State's maximum weekly benefit, death benefits be at least 66 $\frac{2}{3}$ percent of the worker's gross weekly wage.

As of July 1, 1973, the maximum weekly death benefit be at least 66 $\frac{2}{3}$ percent of the State's average weekly wage, and as of July 1, 1975, the maximum be at least 100 percent of the State's average weekly wage.

Death benefits be paid to a widow or widower for life or until remarriage, and in the event of remarriage two years benefits be paid in a lump sum to the widow or widower. Also, the benefits for a dependent child be continued at least until the child reaches age 18, or beyond such age if actually dependent, or at least until age 25 if enrolled as a full-time student in any accredited educational institution.

EXISTING PROGRAM

Same as above.

Temporary or permanent total disability benefits are paid during the disability.

Permanent total disability compensation equals 60 percent of the average weekly wage in the State, and an additional sum of \$5 per week for each dependent child is paid to the disabled employee; however, the combined compensation and dependency award may not exceed the net wage, after deductions for taxes, earned by the claimant at the time of the injury.

Same as above.

Total disability has been judicially defined to mean an injury disabling an employee from engaging in the type of labor in which he was engaged at the time of his injury and any other kind of employment which he is qualified to perform and thus making the employee unable to procure and retain employment.

Death benefits are paid to the surviving spouse in the amount of \$43.50 per week, along with a dependent's benefit of \$7 per week is paid per child.

Same as above.

Death benefits are paid to a widow or dependent widower until her or his death or remarriage and dependent's benefits are paid until the child dies, marries, reaches the age of 18, or becomes capable of self-support. In the event of remarriage, two years' benefits are paid in a lump sum to the widow.

The 19 recommendations include six recommendations in two cost areas — temporary and permanent total disability benefits and death benefits. A change in temporary and permanent total disability benefits from the existing 60 percent of the State's average weekly wage formula to a formula based upon 66⅔ percent of the employee's wage, with a maximum benefit not to exceed 100 percent of the State's average wage, would result in a projected 14 percent increase in workmen's compensation premiums. This projected 14 percent increase could be reduced to 12 percent with an elimination of the present \$5 per week additional allowance for each dependent child. A change in death benefits from the present \$43.50 per week to a formula based upon 66⅔ percent of the employee's gross weekly wage, subject to a maximum of 100 percent of the State's average weekly wage, would result in a projected 51 percent increase in workmen's compensation premiums. Therefore, adoption of all six recommendations pertaining to temporary and permanent total disability benefits and death benefits would result in a projected 65 percent increase in workmen's compensation premiums.

Substantial concern was expressed over the proposed federal legislation, sponsored by U.S. Senators Harrison Williams and Jacob Javits and known as S. 2008, which would require the states to comply with all 84 recommendations of the National Commission by January 1, 1975. Failure by a state to comply with the requirements of S. 2008 would result in the application of the federal Longshoremen's and Harbor Workers' Compensation Act within the state.

Due to the possibility of federal preemption in the area of state implementation and administration of workmen's compensation the Committee unanimously passed a resolution referring to the express recommendations of the National Commission against federal administration of workmen's compensation as a substitute for state programs and in favor of allowing states a reasonable period of time in which to comply with the recommended standards for a modern workmen's compensation program and urging Congress to defeat S. 2008.

As the study of the workmen's compensation program progressed, several suggestions were received for improvements in the program. The suggestions primarily concerned the extent and amount of workmen's compensation coverage and included: full implementation of the recommendations of the National Commission, with at least implementation of the essential recommendations by 1975; removal of the agricultural employment exemption from mandatory workmen's compensation coverage; elimination of the \$3,600 payroll limitation and utilization of the gross payroll for determining workmen's compensation benefits established when benefit levels were lower than

existing levels; establishment of a second injury fund; and establishment of an advisory council to aid the Workmen's Compensation Bureau in formulating policies in administration of the program.

Recommendations

With regard to the extent of mandatory workmen's compensation coverage, the Committee recommends two bills. One bill would remove the present exemption of agricultural employment from mandatory workmen's compensation coverage, with special provision being made to exclude from mandatory agricultural coverage farmers or employees of farmers who work on an exchange basis for another farmer, relatives of the farmer, and wards or dependents living with the farmer unless the farmer notifies the Bureau and pays a premium for such coverage. The other bill would remove the present exemption of members of the clergy and employees of religious organizations engaged in the operation, maintenance, and conduct of a place of worship from mandatory workmen's compensation coverage.

With regard to the amount of workmen's compensation benefits, the Committee recommends a bill which would change the present formula for determining temporary or permanent total disability benefits from 60 percent of the average weekly wage in the State to a formula based upon the weekly wage of the claimant. The recommended benefit formula is 66⅔ percent of the weekly wage of the claimant, subject to a minimum of 60 percent and a maximum of 100 percent of the average weekly wage in the State. The recommended benefit formula provides that compensation would be proportional to the lost remuneration of the employee so that a worker's benefit would be based on earnings before the disability. The minimum and maximum provisions in the recommended benefit formula ensure that low-wage workers would not receive less compensation than is allowed under the present benefit formula and that while workers would receive improved benefits, the benefits are subject to a maximum commensurate with the 1975 level recommended by the National Commission.

The Committee also recommends a bill to establish an advisory council to the North Dakota Workmen's Compensation Bureau. The advisory council would consist of seven members composed of an equal number of employer representatives and employee representatives and one or more representatives of the public. The purpose of the advisory council would be to aid the Bureau in formulating policies and discussing problems related to the administration of the Bureau.

OCCUPATIONAL SAFETY AND HEALTH ACT STUDY

In 1970, Congress passed the Occupational Safety and Health Act (OSHA) for the purpose of assuring so far as possible every working person in the Nation safe and healthful working conditions. The Act provides for the establishment of nationwide occupational safety and health standards to be administered by the U.S. Department of Labor. However, the Secretary of Labor is authorized to enter into an agreement with a state under which the state would be permitted to enforce occupational safety and health standards under an approved state plan for the establishment and enforcement of job safety and health standards at least as effective as federal standards.

On March 16, 1971, Governor William L. Guy designated the Workmen's Compensation Bureau as the agency responsible for administration of OSHA in North Dakota. The Bureau then received federal funds for the development of a state plan, developed the North Dakota Development Safety and Health Plan in accordance with OSHA requirements, and submitted the plan to the Secretary of Labor for approval. In February 1973, North Dakota became the sixth state to obtain approval of its plan by the Secretary of Labor; however, the legal status of the administration of the plan by the Workmen's Compensation Bureau depended upon passage of Senate Bill No. 2115 by the 1973 Legislative Assembly. As the result of the indefinite postponement of the bill by the House, House Concurrent Resolution No. 3074 was passed, directing a study of the feasibility of state implementation of OSHA.

Present Status Under OSHA

Administration of OSHA is by the U.S. Secretary of Labor on a regional basis, with North Dakota in a six-state region comprised of Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming. To date, the staffing of the regional office has been limited due to a "wait and see" approach to determine the progress of the states in adopting state plans. However, with the indefinite postponement of the enabling legislation by the 1973 Legislative Assembly, the inspection staff of the regional office will eventually be increased to adequately handle safety inspection activities within North Dakota. The Occupational Safety and Health Administration reported that an additional 20 personnel would be required by the regional office for these inspection activities within the State; however, as of 1973 only nine safety inspectors were available to administer OSHA within North Dakota and South Dakota.

Another method utilized in federal administration of OSHA is to contract with the State

for inspection personnel. Under this method, state personnel are utilized and trained by the regional office for the purpose of enforcing the provisions of OSHA. However, the regional office has not contracted with the State of North Dakota for the utilization of state personnel because of the apparent rejection by the 1973 Legislative Assembly of federal funding of any safety inspection program.

Safety inspections under OSHA are presently conducted by personnel employed by the U.S. Department of Labor. Under OSHA, an employer is required to be cited and fined for serious hazards, but for non-serious hazards fines are discretionary, with only 50 percent of the non-serious hazards being fined under present administration. Since the initiation of safety inspections in North Dakota under OSHA, there have been 1,317 safety inspections in the State. For the 12-month period ending September 1974, there were 836 safety inspections with a total of 4,026 violations of a serious and non-serious nature.

Operation Under State Implementation

Federal funds are provided on a 50-50 matching basis as encouragement for states to develop plans for state implementation of OSHA. Twenty-three states have received Department of Labor approval of state occupational safety and health plans, and 19 of those states have received legislative approval of state implementation. In this region, Colorado, Utah, and Wyoming have implemented state occupational safety and health plans.

Under the plan developed by the Workmen's Compensation Bureau, employers in North Dakota would have been placed in three classes with the number of inspections varying in each class. The safety staff of the Bureau would have been expanded to 22 personnel and the estimated cost of administration of the plan by the Bureau was \$592,000 per biennium in contrast to the present \$120,000 per biennium funding of state safety personnel.

In addition to considering the proposal for state implementation of OSHA by the Workmen's Compensation Bureau, consideration was also given to the implementation of OSHA by the State Labor Department. While implementation of the Act would require the state to comply with requirements and guidelines of the U.S. Department of Labor, the type of agency involved in administering a state plan could result in variations in administration and funding requirements. Under the State Labor Department's proposal, the state would have been geographically divided into three inspection areas. The eastern area would have four inspectors, the central area would have two inspectors, and the western area would have two inspectors. The proposal of the State Labor Department was estimated to require \$654,500 per biennium.

Operation Without State Implementation

At the present time, administration of OSHA in North Dakota is by the U.S. Department of Labor. The Department of Labor, through its regional office, administers OSHA and conducts safety inspections of employers within the state. In addition to federal inspections under OSHA, the Workmen's Compensation Bureau has a safety department of six safety inspectors who conduct minimum safety inspections and administer the State Safety Act to political subdivisions, which are not under the coverage of OSHA. In addition, the Bureau is presently providing a consulting service through which an employer can request the Bureau to make a courtesy inspection in order to aid the employer in determining what needs to be done to comply with OSHA requirements. The Bureau also conducts safety programs for employers and employees and aids in interpreting OSHA regulations for employers.

Conclusion

Testimony presented to the Committee indicated that even under state implementation of OSHA, there would be a constant revision of state regulations and standards to comply with federal regulations and standards as promulgated and revised by the U.S. Department of Labor. In addition, any criticism of regulations promulgated by the State in order to comply with federal requirements would be unduly directed towards the state administering agency, where, in fact, the regulations and standards would be primarily established by the U.S. Department of Labor.

Under the timetable for state implementation of OSHA, safety inspections by federal inspectors would continue for at least three years. In addition to the continuation of federal inspections, the courtesy inspection service provided by the Workmen's Compensation Bureau to employers to aid in promoting safety and reducing the possibility of noncompliance with OSHA requirements would probably have to be discontinued if the Workmen's Compensation Bureau were to implement a state occupational safety and health plan.

Finally, the cost of state implementation of an occupational safety and health plan would amount to an additional \$176,000 per biennium over the present funding of state safety personnel. Therefore, the Committee makes no recommendation for state implementation of the Federal Occupational Safety and Health Act and goes on record as being opposed to state implementation of the Act.

INTEREST RATE SITUATION

Although no study resolution had been assigned to the Committee on Industry and Business "A"

concerning the interest rate limitations on deposits in North Dakota financial institutions, the problem faced by financial institutions as a result of interest rate limitations on deposits became apparent early in the biennium. In order to study the problem faced by financial institutions, the Chairman of the Committee on Industry and Business "A", in accordance with Legislative Council rules, obtained permission from the Chairman of the Legislative Council to consider this problem for the purpose of recommending appropriate legislation.

The Problem

In 1973, the Board of Governors of the Federal Reserve System promulgated new regulations concerning the maximum interest rates payable by member banks of the Federal Reserve System on time and savings deposits. The effect was to authorize financial institutions to pay interest rates substantially higher than previously thought were necessary to attract investment capital. A problem arose in North Dakota, however, because a 1931 statute (NDCC Section 6-03-63) prohibits financial institutions from paying interest rates greater than six percent per annum on time deposits. Although federal regulations authorize higher interest rates, financial institutions are limited by interest rate maximums of the states within which the institutions operate. Thus, North Dakota financial institutions began experiencing a withdrawal of time deposits by depositors who sought to obtain the more favorable interest payments through other types of investments, from financial institutions in other states, and from savings and loan associations in North Dakota.

Testimony presented to the Committee from representatives of the financial industry in North Dakota indicated that the issue concerns borrowers and savers in that the two statutes directly involved relate to the maximum interest rate payable on deposits and the maximum interest rate chargeable on loans. NDCC Section 47-14-09 establishes the maximum interest rate on loans at three percent higher than the maximum interest rate payable on deposits (established by NDCC Section 6-03-63). It was noted that North Dakota is the only State which restricts the interest rate on time deposits in commercial banks to a maximum of six percent per annum.

The problem faced by financial institutions in North Dakota is compounded by the fact that Minnesota and South Dakota do not establish a specific interest rate maximum on deposits. Therefore, North Dakota financial institutions close to the border of these states are experiencing a substantial withdrawal of deposits. Statistics presented to the Committee indicated that deposits in North Dakota commercial banks increased only 5.3 percent in 1973, while Minnesota bank deposits

increased 10.2 percent, South Dakota bank deposits increased 15.6 percent, and Montana bank deposits increased 10 percent. Of special importance were the statistics relating to the financial institutions in the "twin" cities of Grand Forks-East Grand Forks, Fargo-Moorhead, and Wahpeton-Breckenridge. Deposits in Grand Forks banks increased 7.7 percent, while deposits in East Grand Forks banks increased 20.9 percent; deposits in Fargo banks increased 1.8 percent, while deposits in Moorhead banks increased 20.8 percent; and deposits in Wahpeton banks increased 9.2 percent, while deposits in Breckenridge banks increased 30.5 percent.

The problem of withdrawal of deposits is not only faced by institutions in cities on the border of the State. Testimony was presented to the Committee that financial institutions insulated from the North Dakota border are also experiencing withdrawal of deposits. Much of the deposits of the financial institutions are being placed in savings and loan associations due to the difference in the interest rates that can be paid between savings and loan associations and financial institutions and thus preventing the normal competition for such deposits. While such a transfer of funds between institutions in the State does not decrease the amount of funds available on the local market, savings and loan associations are not authorized to make other than real estate or real estate-related loans, and therefore funds for other types of loans are not available from the financial institutions.

It was emphasized that money is a commodity, and although attempts are made, laws cannot be passed to prevent its flow to where the best rate is offered, without regard to state boundaries. It was urged that the State should take cognizance of the leadership the Federal Reserve System plays in the money market and should follow the monetary policy decisions established by the Federal Reserve System. If interest rates on deposits are maintained at an artificially low level, the result is a lack of availability of loanable funds in North Dakota, whereas the establishment of a reasonable interest rate maximum on deposits should not reduce the availability of loanable funds.

Recommendation

The Committee recommends a bill amending the present statutory sections limiting the amount of interest payable on time deposits and the amount of interest chargeable on loans. The Committee determined that the present three percent differential between the maximum interest rate payable on time deposits in financial institutions and the present maximum interest rate chargeable on loans should be maintained. Recognition was also given to the dominant role the Federal Reserve System plays in economic policy in the United States.

Section 1 of the bill prohibits a state banking association from paying interest on deposits at rates greater than authorized by the State Banking Board, which shall not exceed applicable maximum rates of interest established by the Federal Reserve System.

At the present time, maximum interest rates established by the Board of Governors of the Federal Reserve System are as follows:

Time deposits of less than \$100,000	
30-90-day maturity	5 percent
90-day, 1-year maturity	5½ percent
1-year-30 months' maturity	6 percent
30 months' or more maturity	6½ percent
Time deposits of \$1,000 or more	
with a maturity of 4 years	
or more	7¼ percent
Time deposits of \$100,000 or	
more	no interest rate maximum
Savings deposits	5 percent

Section 2 of the bill establishes the maximum interest rate chargeable on loans at no more than three percent higher than the maximum interest rate payable on time deposits maturing in 30 months as authorized by the State Banking Board under Section 1 of the bill.

The Committee emphasizes the importance of its recommendation for early action on the interest rate limitations on deposits and an emergency clause is provided in Section 3 of the bill so action taken by the Legislative Assembly will be effective upon passage and approval of the bill.

INDUSTRY AND BUSINESS "B"

The Committee on Industry and Business "B" was assigned one study resolution. House Concurrent Resolution No. 3056 directed the Legislative Council to study and review statutes relating to labor laws in the public and private sector of North Dakota's economy.

The members of the Committee were Representatives Charles Herman, Chairman, A. G. Bunker, L. E. Garnas, John F. Gengler, Clayton Lodoen, Ed Metzger, Charles Orange, Anna Powers, and Malcolm Tweten; and Senators C. Morris Anderson, Chuck Goodman, and J. Garvin Jacobson.

The study as directed by the resolution involved a very broad area of the law, and after hearing proposals for areas of study, the Committee narrowed the scope of the study to three areas — Labor Commissioner proposals, agricultural employment relations, and public employment relations.

The report of the Committee on Industry and Business "B" was submitted to the Legislative Council at the biennial meeting of the Council held at Bismarck. The report and recommended legislation were adopted for submission to the Forty-fourth Legislative Assembly by the Legislative Council in November 1974.

Labor Commissioner Proposals — Recommendations

The State Labor Commissioner appeared before the Committee and presented proposals to eliminate duplicative or obsolete labor provision, improve existing labor procedures, and establish new labor legislation. After studying the proposals, the Committee makes the following recommendations to substantially implement the Labor Commissioner's proposals.

The Committee recommends a bill to repeal Section 34-06-16, which provides for a civil action by an employee to recover the difference between a minimum wage established by the Commissioner and the wage actually paid to the employee by the employer. Reliance for collection of unpaid wages would then be placed solely upon the Wage Collection Act, Chapter 34-14.

The Committee recommends a bill to amend Section 34-07-19 to eliminate the requirement that the Labor Commissioner proceed through the local state's attorney to prosecute violations of the child labor laws. With the elimination of such a requirement, the Commissioner could then proceed

through the attorney general's office for prosecution of violations of the child labor laws. The bill would also repeal Section 34-07-09 and Subsection 11 of Section 34-07-16. Repeal of Section 34-07-09, which requires a specified number of years of school attendance by a minor prior to issuance of an employment certificate, would place reliance upon the school attendance requirements of Chapter 15-34.1. Repeal of Subsection 11 of Section 34-07-16 would eliminate the prohibition of employment of a minor as a pinboy and take cognizance of the fact that no bowling establishment in North Dakota employs pinboys.

The Committee recommends a bill to repeal Section 34-01-10, which prohibits an employee from fraudulently securing transportation or other benefits from an employer. Adequate remedies against an employee taking such action presently exist in other provisions of law dealing with breach of contract and theft.

The Committee recommends a bill to amend Section 34-12-08 to authorize the Labor Commissioner to take such affirmative action as the Commissioner deems proper, including reinstatement of employees with or without backpay, in order to provide relief to employees against whom an unfair labor practice has been directed. This would provide immediate relief to the employees without postponing such action to await the results of a lengthy court proceeding.

The Committee recommends a bill to amend Section 34-14-09.1 to provide that, in addition to the present allowance of interest on unpaid wages, an employee would be entitled to recover from the employer an amount equal to double the unpaid wages if, on separate occasions, the employer has been found liable for two previous wage claims, and treble the unpaid wages if, on separate occasions, the employer has been found liable for three previous wage claims. The Committee believes that this approach would best encourage employers who continuously violate minimum wage requirements to pay the required wages to their employees.

The Committee recommends a bill to amend Section 65-04-15 to authorize the Workmen's Compensation Bureau to provide lists of employers' names and addresses to the Labor Commissioner. This would allow the Labor Commissioner to notify employers with regard to proposals for changes in the minimum wage orders issued by the Commissioner.

Finally, the Committee recommends a bill to establish a North Dakota Equal Employment

Opportunity Act. The provisions of the bill basically follow the provisions of the Federal Equal Employment Opportunity Act in order to qualify the State Department of Labor as a deferral agency of the Federal Equal Employment Opportunity Commission for employment discrimination charges made under the Federal Act, but coverage of the proposed North Dakota Act has been expanded to provide additional protection to employees within the State. The bill would prohibit an employer, employment agency, labor organization, or licensing agency from discriminating in employment practices because of race, color, religion, national origin, sex, age (between 40 and 65), or marital status. However, discriminatory employment practices would not be prohibited with regard to religion, national origin, or sex in instances where religion, national origin, or sex are bona fide occupational qualifications necessary for the operation of the business or enterprise. A complaint would be filed with the State Labor Commissioner, who would notify the party charged, investigate the complaint, and either dismiss the complaint or seek settlement through conciliation. If conciliation does not result in settlement, the commissioner would hold a hearing on the complaint, receive evidence and testimony, and issue a decision either dismissing the complaint or requiring the charged party to cease and desist from the discriminatory practice. Any persons aggrieved by an order of the Commissioner would have the right to appeal the decision to district court. The bill would also repeal Sections 34-01-17 and 34-01-18 which prohibit discrimination in employment because of age (between 40 and 65) and discrimination against women jockeys.

Agricultural Employment Relations — Conclusion

Collective bargaining procedures for employees are established by the Federal Labor-Management Relations Act and the North Dakota Labor-Management Relations Act (Chapter 34-12), which is substantially patterned after the Federal Act. The Federal Act applies to situations where a labor dispute would affect interstate commerce and establishes procedures for promoting collective bargaining between employee representatives and the employer. Employees are granted the right to form, join, or assist employee organizations, to bargain collectively through employee representatives, to engage in other lawful concerted activities for the purpose of collective bargaining, and to refrain from any or all such activities. Certain acts by an employer and an employee organization are deemed to be unfair labor practices and may be prosecuted and remedied by the National Labor Relations Board. The Federal Act also establishes guidelines and procedures for determining employee representatives and conducting secret ballot elections to determine the employee representative.

Chapter 34-12 applies to situations not covered by the Federal Act or jurisdictionally exempted from federal coverage by the National Labor Relations Board. Although both Acts promote collective bargaining, a void is left as to their applicability to certain employer-employee relationships. Neither Act applies to the United States, government corporations, federal reserve banks, states and their political subdivisions, persons subject to the Railway Labor Act, labor organizations (when not acting as employers), officers or agents of labor organizations, agricultural laborers, domestic workers, individuals employed by a parent or spouse, independent contractors, or supervisors. In addition to the above-mentioned exclusions from coverage, the state Act does not apply to associations operating nonprofit hospitals or to guards.

The Committee received two alternative proposals to establish employment relations legislation for agricultural employees who are presently in a "void" with regard to employment relations procedures — establishment of a separate Act to regulate employment relations between agricultural employers and employees or amendment of Chapter 34-12 to remove the exemption of agricultural labor to have the Act's employment relations procedures apply to agricultural employers and employees. The concerns expressed to the Committee about the present void in agricultural employment relations in North Dakota involved the lack of a requirement for secret ballot elections to determine employee representatives, the availability of secondary boycotts of agricultural products as a tool to require employer recognition, and the use of employee strikes against the employer. Much of the testimony presented to the Committee in support of a separate Act for agricultural employees involved the efforts of labor organizations to organize farmworkers in California and across the southern part of the United States. As a result of this testimony, the Committee considered a bill based primarily on the Kansas Agricultural Employment Relations Act, but including composite provisions of the two other Agricultural Employment Relations Acts in effect in the United States — Arizona's and Idaho's.

The bill considered by the Committee would have established procedures for collective bargaining, limited the subject areas of bargaining, and listed employer and employee organization unfair practices (which included prohibition of secondary boycotts and prohibition of strikes during periods of marketing of livestock or during critical periods of production or harvesting of crops). The Labor Commissioner would have administered the Act, conducted employee representation elections, and handled unfair practice charges. Methods of resolving impasses in bargaining were provided in the Act and included mediation and factfinding, with the results not binding on either party.

After consideration, the Committee rejected the bill to establish an Agricultural Employment Relations Act. The Committee concluded that the provisions of the Act were restrictive in coverage, application, and rights granted to agricultural employees. The provisions concerning collective bargaining procedures placed substantial emphasis on employers' rights, and the Committee concluded those provisions severely limited the areas normally considered proper for bargaining in the employee-employer relationship. In addition, agricultural employment in North Dakota is largely seasonal in nature and the Committee believed the provisions limiting the right of agricultural employees to withhold their services during seasonal periods would, in effect, exempt the majority of agricultural employees from the Act. The Committee also concluded that restricting the right to strike to certain periods would eliminate a means for employees to take effective action to indicate dissatisfaction with working conditions. Finally, the Committee concluded that the Act would not prohibit strikes at agricultural processing operations (which come under coverage of the Federal Act), nor would the Act be necessary to prohibit secondary boycotts of agricultural products because such activities are prohibited under the provisions of Chapter 34-09.

The Committee also considered a bill to amend Chapter 34-12 to remove the agricultural employment exemption to the state Labor-Management Relations Act; however, the bill was rejected by the Committee as the result of determining that expansion of the state Act would serve no useful purpose at the present time for agricultural employees are not attempting to organize in North Dakota.

Public Employment Relations — Recommendations

As previously indicated, collective bargaining procedures for employees are established by the Federal Labor-Management Relations Act and the North Dakota Labor-Management Relations Act. However, as with agricultural employment, a void exists with regard to employment relations procedures for public employees. For this portion of the study, the Committee reviewed the basic components of public employment relations legislation and studied legislation enacted by other states.

Public employment relations legislation may establish either of two types of employee-employer relations — meet and confer or collective bargaining. A meet and confer relationship is an informal process where the employee meets with the employer to present proposals, but the employer retains the sole decisionmaking authority. In comparison, a collective bargaining relationship is a formal process

where the employee meets with the employer and both parties engage in a bilateral decisionmaking process. Twenty-nine states have some form of collective bargaining procedure for public employees, three states have a meet and confer procedure, and 18 states have no statutes governing public employment relations.

In North Dakota, no procedures exist to establish procedural guidelines for public employment relations. Although Chapter 34-11 provides for mediation of disputes between public employers and employees, the chapter does not establish requirements for employee representation elections or collective bargaining procedures, nor does it prohibit unfair practices. As the result of testimony received from employee groups urging establishment of public employment relations legislation, the Committee concentrated its consideration of public employment relations into two areas of special concern — municipal firefighters and state employees.

Representatives of the Uniformed Firefighters of North Dakota appeared before the Committee and urged approval of public employment relations legislation specifically directed to municipal firefighters. It was urged that special employment relations legislation is needed for certain employees, e.g., firefighters, due to the differences these employees have from other public employees with regard to organization and working conditions.

Special circumstances were found by the Committee to exist in employment conditions of firefighters, especially with regard to the inclusion of "supervisory" personnel and the relationship of firefighters to public health, safety and welfare. Therefore, the Committee recommends a bill to establish special employment relations legislation for firefighters. The bill would enable firefighters, except the chief officer and the highest ranking officer immediately below the chief, employed by a city, county, or fire protection district to join employee organizations for the purpose of collective bargaining. Organizations would be recognized as exclusive representatives by employer recognition or by certification by the Labor Commissioner as the result of a representation election and a determination that the unit is appropriate due to community of interest, wages, hours, and other working conditions of the employees involved, history of collective bargaining, and desires of employees. A charge of an unfair practice would be submitted to the Labor Commissioner and the Commissioner would investigate the charge, make findings, and issue an appropriate order after testimony is received.

The bill would require a party to the collective bargaining agreement to serve written notice to the other party of a proposed termination or modification of the agreement at least 90 days prior to the expiration date of the agreement or, if there is no expiration date, 90 days prior to the time of the proposed termination or modification and to offer to meet and negotiate with the other party. The Labor Commissioner would be notified of any dispute and the parties would be required to participate in mediation sessions of the Labor Commissioner, if requested to do so by the Commissioner. If no procedure for final disposition of the dispute is in existence and an impasse has been reached, either party could petition the Commissioner to initiate final and binding arbitration. Upon receipt of a petition, the Commissioner would determine whether an impasse has been reached, and if an impasse is determined to exist, the Commissioner would submit a list of names to the parties, who would alternately strike names until a single name is left (who would be appointed the arbitrator by the Commissioner).

The bill would provide two alternate forms of arbitration:

1. The arbitrator determines all issues in dispute involving wages, hours, and conditions of employment; or
2. The arbitrator selects either final offer submitted by each party.

The bill would require that unless the parties agree otherwise, the final offer form of arbitration would be used. The arbitrator would be required to give weight to the lawful authority of the employer; the stipulations of the parties; the interests and welfare of the public and the financial ability of the unit of government to meet the costs involved; a comparison of wages, hours, and conditions of employment of the employees involved with other employees performing similar services in public and private employment in comparable communities; the cost of living; and any changes in these circumstances during the proceedings. Costs of arbitration would be paid by the employer, and any party aggrieved by a determination made by an arbitrator could appeal the determination to the appropriate district court. Employers and employees would have the duty to refrain from lockouts and strikes, and strikes by employees would be expressly prohibited.

The Committee also received testimony from employee organizations representing state, county, and municipal employees. It was pointed out that there are approximately 41,000 non-federal public employees in North Dakota who have no established procedures to guide employee-employer relations,

and it was urged that public employees be provided with rights similar to private sector employees by establishing procedures to govern employment relations to allow public employees a process to obtain job satisfaction and to resolve employee-employer disputes. Diverse proposals for employment relations legislation were received with the major differences involving membership in and size of employee units.

The Committee believes that the present statutory void with regard to public employment relations should be eliminated. Although different proposals were received concerning membership in and size of employee units, the Committee believes that elected and appointed officials should not be members of employee organizations, that supervisory employees should not be in employee units containing non-supervisory employees, and that the size of employee units should be based upon community of interest of the employees involved which is usually found to exist at the departmental level.

Due to the delicacy of establishing new employment relations legislation for public employees, the Committee recommends a bill to apply to state employees only. The bill would enable state employees, except elected and appointed officials, to employee organizations for the purpose of collective bargaining. Employee organizations would be certified as exclusive representatives by employer recognition or by certification by the Public Employment Relations Board (consisting of four appointees of the Governor, with the State Labor Commissioner as chairman). Certification by the Board would result from a representation election and a determination that the unit is appropriate for the purpose of collective bargaining due to community of interest, wages, hours, and other working conditions; history of collective bargaining; and the desires of the employees, but supervisory employees could not be placed in units which would include non-supervisory employees.

The bill would specifically list unfair practices and the parties would have the duty to meet and negotiate in good faith with respect to wages, hours, and other terms and conditions of employment. If the negotiation would concern items requiring legislative appropriation or approval, the negotiation would be between the employee organization and the Governor or his representative, with the result subject to legislative approval. If the negotiation would concern matters not requiring legislative appropriation or approval, the negotiation would be between the employee organization and the chief executive official of the agency involved. Terms of an agreement approved by the Legislative Assembly would prevail over conflicting rules and regulations of the employer.

The bill would establish a procedure whereby at least 30 days prior to the expiration of an agreement the parties would be required to notify the board of the status of negotiation and the board could appoint a mediator on its own motion or upon request of either party. Upon the expiration of an agreement, the board, on its own motion or upon receipt of a petition from either party, could initiate factfinding and each party would have three days to designate a factfinder. The two factfinders would then designate a third factfinder within 10 days to serve as chairman of the factfinding panel, but if no agreement is reached on the third factfinder, either party may request the Federal Mediation and Conciliation Service or the American Arbitration Association to submit a list of seven names from which the parties would alternately strike names to determine who would be the Chairman of the factfinding panel. The employee organization and the employer would be the only parties to factfinding proceedings, and within 20 days from appointment of the chairman, the factfinding panel would make its findings and recommendations for resolution of the dispute. Costs of the proceedings would be borne by the board, but each party would bear the costs of its designated factfinder. Strikes by employees would be expressly prohibited.

The bill would also amend Chapter 34-11 to delete references to the State with regard to the use of mediation boards to resolve public employer-employee disputes at the state, county, or municipal level. The Committee believes the provisions in Chapter 34-11 for mediating disputes concerning state employees would be unnecessary due to the provision in the bill for impasse resolution procedures.

The intent of the Committee in recommending a dual collective bargaining situation is to place responsibility for negotiating for economic (cost) items with the Governor. Because cost items would be required to be placed in the Executive Budget to provide the Legislative Asembly with a means of specifically approving or disapproving such items, the Committee believes that the Governor should be assured of representation at the bargaining table when negotiation concerns such items. However, the Committee believes that while the Governor would be deemed the employer for the purpose of negotiating economic items, the Governor would not engage in negotiation sessions but would designate appropriate representatives to act on the Governor's behalf, such as the chief executive official of the agency involved or a representative of the Executive Budget Office.

INSTITUTIONAL ORGANIZATION

The special Committee on Institutional Organization was appointed on June 6, 1973, by the Chairman of the Legislative Council in response to a request from Governor Arthur Link that a committee be named to review the roles of the State's charitable and penal institutions, and to determine if they should be integrated with programs in their fields in existing state departments rather than continue as separate entities under the Director of Institutions' office.

Appointed to the Committee were Representatives Oscar Solberg, Chairman, Charles Fleming, Robert Reimers, Earl Strinden, Aloha Eagles; Senators Frank Wenstrom, Vice Chairman, Rolland Redlin, Evan Lips, S. F. Hoffner; Lieutenant Governor Sanstead; and Citizen Members George Sinner, Corliss Mushik, Lois Vogel, Howard Bier, and Lois Erickstad.

The May 31, 1973, letter from Governor Arthur Link, forwarded in accordance with Section 54-35-05 of the North Dakota Century Code which provides that the Governor may send messages to the Council as he may deem advisable, asked that the Legislative Council create a committee to study the placement of the charitable and penal institutions in the State. In this letter the Governor stated the following:

"I very much appreciate the opportunity, in accordance with Section 54-35-05 of the North Dakota Century Code, to request the cooperation and assistance of the Legislative Council in an area that I am sure is of mutual interest and concern. This matter involves the operation and placement of our state penal and charitable institutions in the structure of state government in North Dakota.

"The staff of the Legislative Council very kindly prepared a memorandum for me summarizing studies and legislation that have been introduced in regard to the placement and functions of our state penal and charitable institutions and the Office of Director of Institutions (previously State Board of Administration).

"The memorandum quotes extensively from the 1942 governmental survey in regard to recommendations of the Public Administration Service in the course of its study. It also cites other Council studies relating to portions of the responsibilities of the Office of the Director of Institutions. Nineteen separate bills are also cited from 1953 through 1973, that have been considered by the legislative Assembly, exploring almost every available alternative in regard to

the organization and placement of our institutions in our structure of government.

"As you know, with the exception of the State Hospital, which was transferred from the State Board of Administration to the Mental Health and Retardation Division of the Department of Health in 1965, and the Soldiers' Home, which has its own Board, all penal and charitable institutions are under the central management of the Director of Institutions and have been under the management of that office or its predecessors since the institutions were created. In reviewing the development of institutions and service programs in the State, it is easy to understand why the institutions were placed under this office when they were originally created.

"All of our institutions, such as the State School of the Deaf, the State School for the Blind, Grafton State School, San Haven State Hospital, Jamestown State Hospital, the State Industrial School, the State Capitol and Grounds, and the State Penitentiary had really only one thing in common.

"That was the fact that they were state institutions and generally followed the same statutes as to their operation and administration. It was not unnatural that certain central management services such as central purchasing, central budgeting, uniform accounting systems, etc., were desired which a central management office would provide. The programs carried on by these institutions at the time of their creation were the State's only programs in the field.

"For instance, in the mental health and retardation field, the only public program was that of complete institutionalization. In those days, institutionalization was viewed as permanent or semi-permanent custody, and little rehabilitation, treatment, or education was involved.

"In the case of penal and correctional institutions, again it was a matter of custody of the persons involved, since extensive parole and probationary systems, rehabilitation programs under suspended or deferred imposition of sentence, and alternative treatment programs did not exist.

"In the educational field, the institutional program for the education of the blind and the deaf were the only real programs available, since special education through public schools had not yet come onto the scene.

"Prior to the days of the development of effective treatment for tuberculosis, the only real choice was that of long-term hospitalization in an isolated institution, so again there was no other real alternative to those citizens afflicted with this disease and no other state program offered. Today, tuberculosis patients can be cared for and cured with relatively short stays in public hospitals.

"Over the years, new and modern methods of caring for or treating the ills of our citizenry have been developed, and today institutionalization is only one of the alternatives that the State and its political subdivisions offer to assist its citizens.

"Extensive special education programs exist in the public schools of this State under a program administered by the Department of Public Instruction which certainly gives other alternatives to at least a major portion of students who may have learning difficulties because of problems of hearing, speech, mental retardation, emotional difficulties, and other causes.

"In the field of corrections, the courts, through more modern rehabilitative and sentencing techniques, make much greater use of probation and parole services provided by probation and parole officers, of pre-sentence investigations, and of family or environmental evaluations carried on by Social Service Department staff members. Social workers attempt to assist both the person in trouble with the law and the families in changing their environment, providing assistance, or alleviating circumstances that may have been a cause in the criminal act.

"The Social Service Department programs such as counseling, foster homes, and evaluation and treatment efforts in the mental health and retardation fields in cooperation with the juvenile courts provide further assistance to those having problems with the law and give other alternatives to that of sentencing to the State Industrial School. Similar assistance is available to permit the release of those who are initially sent to the Industrial School.

"Yet, in spite of the development of many field programs at the state and local governmental level which may very well serve and assist many more people than the institutional programs, we have failed to structurally integrate these services with our institutional programs. Instead, we have continued a type of structural or administrative isolation of our institutions as though they were still the exclusive approach of the State to providing the assistance, service, or custody. The original reasons for placing all penal and charitable institutions un-

der a central management office in order to obtain central purchasing, budget supervision, uniform accounting, etc., are no longer valid, since these services, assistance, and supervision are now available to all agencies from the Department of Accounts and Purchases and the State Auditor's Office.

"It appears to me that the time has come for a serious review of the proper place in structure of state government of our penal and charitable institutions, and a determination of whether making such institutions a part of the operating state department having responsibility for parallel field services for similarly affected people could result not only in increased economy and efficiency, but in improved service to the individuals the institution is intended to serve.

"In short, while the placement of all penal and charitable institutions under the management of a single board or office at the state level may have been desirable in the early days of statehood when the institutional programs were the only state programs in the field and other central administrative services and supervision were not available, it may not necessarily be so today. It may no longer provide for the greatest efficiency and service to people in view of the number of supplemental or even more effective field programs that have developed that do not necessarily involve institutionalization.

"If North Dakota is to be responsive to the needs of its citizens and provide a high level of governmental service at a reasonable cost to the taxpayers of the State, we certainly should review every avenue that might conserve the public funds and provide the greatest service to the citizens from the funds presently being expended. I believe improvements in the structure and placement of our penal and charitable institutions, which would provide the proper relationship with the operating state department and field activities, would have this result.

"Consequently, I most sincerely urge that you, as Chairman of the Legislative Council, appoint a special committee consisting of legislators and interested and knowledgeable citizens to review the organizational status and programs of our state institutions and parallel programs of operating state departments.

"I do not believe it is necessary to carry on great and intensive detailed research in view of previous studies and the great amount of legislation that has been introduced which explores so many of the alternatives available. Rather, I think it is only a matter of becoming better informed about the programs being carried on by each of the institutions and

operating departments, reviewing the alternatives that have been pointed out in the past to exist, and determining by common sense and business and administrative judgment whether the interests of the citizens would not be better served by a new organizational structure.

"I earnestly solicit the cooperation of the Legislative branch of government through a committee of the Legislative Council in reviewing and making recommendations that will further our common goal of providing improved and efficient service to the citizens of our state."

The institutions under the supervision of the Director of Institutions' office are the School for the Blind, School for the Deaf, State Industrial School, State Penitentiary, Grafton State School, and the San Haven State Hospital. The Director of Institutions' office is also responsible for the State Communications Fund, Statewide Radio Network, the State Library Commission, and the maintenance of the State Capitol and State Office Building. He is responsible for the operation of the institutions and departments and provides management services to them in addition to other services. Please refer to Exhibit "A" for information regarding the number of students, staff, budget items, and other information regarding the School for the Blind, the School for the Deaf, and the State Industrial School. Please refer to Exhibit "B" for information regarding the number of inmates, residents or patients, number of staff, budget items and other information regarding the State Penitentiary, Grafton State School, and San Haven State Hospital.

The report of the Committee on Institutional Organization was submitted to the Legislative Council at the biennial meeting of the Council held at Bismarck. The report and recommended legislation were adopted for submission to the Forty-fourth Legislative Assembly by the Legislative Council in November 1974.

LOCATION AND PURPOSE OF INSTITUTION

The School for the Blind is located in Grand Forks, North Dakota. The law provides that the School for the Blind shall receive and educate blind and partially blind children who are residents of this State and who, because of this handicap, are not able to receive their education in the public schools of this State. The School for the Deaf, established in 1889, is located at Devils Lake, North Dakota, and was created to provide all methods in educating the deaf and provide for their proper training and instruction. The North Dakota Industrial School, established in 1903, is located at Mandan, North Dakota. Its purpose is to be the general reform and industrial

school of the State for the detention, instruction, care, and custody of the mentally deficient of this State. It also may establish such trades and manual industries as may best prepare residents for future self-support. The San Haven State Hospital, located at Dunseith, North Dakota, is a division of the Grafton State School known as San Haven State Hospital. The San Haven State Hospital may be used for the prevention and treatment of tuberculosis of every kind or nature and for such purposes as may be consistent with the uses and purposes of the Grafton State School. The State Penitentiary, established in 1885, is located at Bismarck, North Dakota, and is the general penitentiary and prison of this State for the punishment and reformation of offenders against the law in which all offenders who are sentenced to imprisonment for one year or more shall be confined securely and employed and governed in the manners provided by law.

The Committee gathered a considerable amount of information regarding the programs, activities, problems, and goals of the institutions under study. In addition to hearing numerous reports at Committee meetings, the Committee toured the institutions under the control of the Director of Institutions office on February 13, 14, and 15, 1974. Information regarding reports heard by the Committee and minutes of the tours are available and on file in the Legislative Council office.

PRIOR LEGISLATION

The following is a summary of legislation introduced during recent legislative sessions regarding the placement of the State's charitable and penal institutions:

1953 Senate Bill No. 269 — Senator Ferry and others — A bill to transfer the duties of the Board of Administration to a Board of Control. and authorizing the employment of a director— passed the Legislature, vetoed by the Governor.

1961 House Bill No. 546 — Representative Solberg and others — Reorganization of the State Board of Administration. This would have provided for the reorganization of the State Board of Administration by making it a seven-man part-time per diem board appointed by the Governor with the consent and approval of the Senate, for staggered seven-year terms, which board would appoint a full-time executive director to make the day-by-day decisions in regard to institutional management — indefinitely postponed.

Senate Bill No. 48 — Senator Fiedler and others — A bill to transfer the jurisdictional control of the Children's Psychiatric Clinic

from the Board of Administration to the State Health Department in order to correlate its function with that of the State Mental Health Authority and to provide for the joint use of personnel — indefinitely postponed. Children's Psychiatric Clinic actually transferred as part of Senate Bill No. 49.

Senate Bill No. 194 — Senators Fiedler and Garaas — A bill to reassign all duties and responsibilities administered by the State Board of Administration among the following agencies: State Health Officer, Executive Director of the Public Welfare Board, Superintendent of Public Instruction, Commissioner of Agriculture and Labor, Department of Accounts and Purchases, Superintendent of Capitol Buildings and Grounds, and Bureau of Criminal Identification — indefinitely postponed.

1963 Senate Bill No. 320 — Senators Hernett and Redlin — A bill to provide for the administration of the State Hospital under the jurisdiction of the Mental Health Division of the State Department of Health, and to transfer all duties and responsibilities administered by the State Board of Administration regarding the State Hospital and the State School for the Feeble Minded to the Mental Health Division of the State Department of Health, and to transfer all the duties and responsibilities regarding the State Tuberculosis Sanatorium to the State Department of Health — passed the Senate, indefinitely postponed by the House.

1965 Senate Bill No. 226 — Senators Sinner and Longmire — A bill relating to the administration and control of the State's penal and charitable institutions, certain public buildings, and other powers and duties of the Board of Administration — lost.

House Bill No. 945 — Committee on Delayed Bills — A bill to transfer the administration and control of the State Hospital to the Mental Health Retardation Division of the State Department of Health — passed.

1967 Senate Bill No. 122 — Senator Larson — A bill which would have transferred the control and administration of the North Dakota Industrial School from the Board of Administration to the Public Welfare Board of North Dakota — indefinitely postponed.

Senate Bill No. 234 — Senators Nething and Meschke — a bill which would have transferred the administration and control of the Grafton State School and the North Dakota State Tuberculosis Sanatorium from the Board

of Administration to the State Department of Health — indefinitely postponed.

House Bill No. 901 — Representative Haugland and others — A bill which would have transferred the control and administration of the North Dakota Industrial School from the Board of Administration to the Public Welfare Board of North Dakota — lost.

1969 Senate Bill No. 425 — Senators Lips and Westrom — A bill relating to establishment of a Director of Institutions and abolishment of the Board of Administration — passed.

1971 Senate Bill No. 2062 — Senator Holand and others — Transfer of Industrial School. This bill would have transferred control of the State Industrial School from the Director of Institutions to the State Public Welfare Board — lost.

Senate Bill No. 2499 — Senator Sanstead — A bill which would have transferred control and management of the State School and State Tuberculosis Sanatorium from the Director of Institutions to the State Department of Health — indefinitely postponed.

House Bill No. 1507 — Representatives Eagles and Mushik — A bill which would have created a division of corrections under the public welfare board to exercise control and management of the penitentiary, state farm, industrial school, and state youth authority — failed.

House Bill No. 1522 — Representative Solberg — A bill to change the name of the North Dakota State Tuberculosis Sanatorium to the San Haven State Hospital and providing the State Director of Institutions with authority to accept federal funds and programs on behalf of the Hospital — passed.

House Bill No. 1543 — Representative Hoffner — A bill transferring control of the North Dakota Industrial School to the Public Welfare Board — lost.

1973 Senate Bill No. 2058 — Senator Lips — A bill which would have transferred control of the North Dakota School for the Blind and School for the Deaf to the Superintendent of Public Instruction, and the Grafton State School and San Haven State Hospital to the Mental Health and Retardation Division of the State Department of Health — indefinitely postponed.

Senate Bill No. 2399 — Senator Hoffner and others — A bill which would have created a board of corrections and a division of corrections within the Social Service Board which would provide for the custody and treatment of persons convicted of public offenses — indefinitely postponed.

1942 STUDY

In addition to the reports heard from the various state institutions and officers, the Committee reviewed the guidelines for governmental reorganization as set forth in the 1942 Public Administration Service study on the "Organization and Administration of the State of North Dakota". The following principles were applied in the proposals made by that firm for reorganization in North Dakota:

1. Full utilization of all the staff, agency, and functions which are essential to effective management.
2. Concentration of administrative authority and responsibility in the Governor.
3. Organization of all administrative activities into a small number of departments designed on a functional basis.
4. Use of boards and commissions for advisory or quasi-judicial functions only.
5. The avoidance of ex officio members in cases where boards are advised.

The North Dakota Governmental Survey Commission recommended that a majority of the proposals contained in the 1942 governmental survey report be adopted, thus recommending a complete streamlining of the entire state government. No action was taken by the following Legislative Assembly on such recommendations, however, although portions of the recommendations contained within the report have been acted upon in subsequent sessions of the Legislative Assembly.

The 1942 report concluded that the study of the public welfare functions of the State indicates a definite need for reorganization. The cardinal points of the Public Administration Service review include the following:

1. The present organization does not recognize that the charitable and correctional institutions are part of the general public welfare of the State. If this recognition existed, the present field staff of the Welfare Department could perform many additional services such as:

- a. Prepare a complete case history on each case admitted to any charitable and correctional institution;
 - b. Conduct a continuous survey of cases to assure that the State's limited institutional facilities are being used for those cases most in need of treatment;
 - c. Investigate homes and communities as possible receivers of parolees;
 - d. Supervise the institutional cases which are paroled; and
 - e. Render consulting assistance on matters requiring the attention of trained and experienced social workers.
2. Financial and personnel administration are weak. The establishment of a department of finance and adopting it by proper budgeting, purchasing, pre-auditing, accounting, payroll, and reporting procedures, will eliminate most of the defective financial practices presently in effect at the institutions. Similarly, the establishment of a department of personnel management will improve the quality and efficiency of personnel.
 3. The two educational institutions, the School for the Deaf and the School for the Blind, and the State Tuberculosis Sanatorium are grouped with other institutions whose functions differ greatly. The State's schools for the education and rehabilitation of the deaf and the blind are primarily educational institutions and not asylums. Consequently, it is recommended that the School for the Deaf at Devils Lake and the School for the Blind at Bathgate be placed under the jurisdiction of the Department of Education, if such is created, or under the present Superintendent of Public Instruction. Likewise, it is recommended that the management of the State Tuberculosis Sanatorium be made a responsibility of the State Department of Health.
 4. At the State Training School and at the two mental institutions there is practically no control or supervision over admissions. No case histories are prepared or investigations made. Similarly, there is practically no supervision over persons paroled or conditionally released. The institutions should not be simply custodial institutions. The institutions provide for care for persons whose welfare both before their entrance and after their discharge is a matter of concern to the Department of Public Welfare. The primary purpose of charitable and correctional institutions is to rehabilitate and cure persons in care and to return them as useful members to society. The Department of Public Welfare

has the organization and trained personnel required to perform the case work services that are essential for intelligent institutional management. The welfare agency and the state charitable and correctional institutions both perform welfare services, the former in the home and community and the latter in the institutions, and these services should be closely coordinated. Responsibility for institutional care should be assigned to the same agency that is responsible for pre and post institutional care, the report concluded.

REPORTS FROM STATE DEPARTMENTS

At the March 1, 1974, meeting, representatives of state departments and agencies reported on their relationships to the various institutions under Committee study and in some instances made recommendations for Committee consideration. Superintendent of Public Instruction, M.F. Peterson, made the following recommendations to the Committee regarding the placement of the charitable and penal institutions in the State:

1. No change in the administration of the institutions discussed as far as the authoritative state agency is concerned. Since the Department of Public Instruction lacks expertise in the management and operation of residential institutions, we feel that there would be no gain in this area should they be moved to the Department of Public Instruction supervision.
2. Mr. Klecker, Director of Institutions, Mr. Hystad, his Assistant, and various members of the Department of Public Instruction are very well acquainted and I believe cooperation is great. I do recommend, however, that communication be improved between the Director of Institutions' office and the office of the Superintendent of Public Instruction.

We should have more constant, continual, and continuous communication if this office is to be responsible in any way for the educational programs of the institutions. Not only must formal communication be improved, but should we have responsibility in the area of the educational program, there should be some authority therein. I wish to emphasize that Mr. Klecker's, Mr. Hystad's and my relations are excellent. I believe that we can improve communication without formal legislation.

Should there be amendments in the law relative to Foundation payments, and should there be changes in practices relative to accreditation, the major area in which com-

munication will play a major role will be in the area of special education — that is in the teaching of the handicapped. The division of the handicapped in the Department of Public Instruction is under the supervision of Janet Smaltz.

3. The budgets of the various institutions, in my opinion, should be increased to the point where the Foundation Program payments are offset. In other words, I recommend that appropriation by the Legislature be in lieu of Foundation payments and that the legislation be so written that when and if there is a decrease in enrollment, there be no decrease for the ensuing year in the payments to the institution. That is the built-in protection as far as public schools and Foundation payments are concerned.
4. I recommend a change in the processes and procedures in accreditation, classification, and standardization of the institutions in question. The Industrial School, the State School in Grafton, and the Schools for the Deaf and Blind are unique in that their programs do not lend themselves to evaluation and classification based on the same criteria and requirements as the "regular" public and non-public schools.

They should, I believe, be evaluated and classified in terms of their counterparts in other states and on the basis of criteria and requirements established by accrediting associations for that type of education.

I wish to add a note in conclusion in that the educational programs of the various institutions have improved and are improving, and taking everything into consideration, there may not be an appreciable gain by transferring their direction from the Director of Institutions.

In behalf of the staff members, as well as myself, I thank you for the opportunity to meet with you and explain our relations with the Director and the Institutions under his supervision.

Miss Janet Smaltz, Director of Special Education, advised Committee that the special education department has sufficient input into the various institutional programs. She does not believe that a change in organization of the state institutions is necessary. The limitations which she said she has witnessed at the various institutions are primarily because of a lack of money.

Dr. Hubert Carbone, Director of the Division of Mental Health and Retardation Services, State Department of Health and Superintendent of the State Hospital, reported to the Committee the

relationships of that division to the various charitable and penal institutions in the State. He reported that mental retardation services are provided mainly through the Division of the Health Department's Division of Developmental Disabilities. The Division of Developmental Disabilities receives \$100,000 per year in federal funds which assists its advisory council in planning programs and activities relating to services and facilities for disabled persons in the State. Dr. Carbone stated that in his opinion a single state agency should be responsible for both the institutional and community mental retardation programs. The specific agency should be selected by the Legislature, he said. He further stated that it is an historical fact that when the State Hospital was transferred to the Mental Health and Retardation Division of the State Health Department it was also proposed that the Grafton State School be included in this transfer; however, the Legislature limited the transfer to the State Hospital.

Representatives of the State Department of Social Services and the Division of Vocational Rehabilitation indicated numerous relationships with the State Industrial School and the Grafton State School. The association with the State Industrial School is particularly important at the present time because the State Youth Authority is administered by the State Social Service Board. In regard to the Grafton State School, State Social Service Board personnel, particularly county welfare board staff, assist families in developing application material for submission to the Grafton State School. Evaluations are also provided by the area social service centers and utilized by the county welfare boards and the Grafton State School for making determinations for placement within the institution. In addition, for a number of years, county welfare boards have supervised children or adults who have returned to the community from the Grafton State School, and consultation has been provided by area social service centers as an aid to supervision. In regard to the State Penitentiary, it was reported that the State Social Service Board provides services, as resources and as personnel permit, to the district and juvenile court system. Services are also provided upon request to the state probation and parole officers, several of whom are located in area social service centers. In regard to the School for the Blind and Deaf, the primary service provided by the Department of Social Services is informational to those individuals who might utilize the services of the School for the Blind and the School for the Deaf. The Social Service Board did not make a recommendation to the Committee in regard to any change in the organization of the state institutions.

The Commissioner of Higher Education, Kenneth Raschke, reported that no formal relationships exist between the charitable and penal institutions

and the institutions of higher education. The primary responsibility of the institutions under the control of the Board of Higher Education to the institutions under study by the Committee is that of training those who train the handicapped. The relationship between his office and the Director of Institutions' office is excellent, reported the Commissioner. It was reported that University of North Dakota student teaching aides and nurses are involved in the School for the Blind work, while Minot State College provides assistance through its teacher education program to the School for the Deaf. The University of North Dakota also provides for psychological testing at the Grafton State School. It was also reported that Valley City State College and Dickinson State College provide certain services to the Industrial School while the State School of Science offers some programs to inmates at the Penitentiary.

OTHER STATES

The Committee also reviewed institutional structures responsible for institutions similar to the office of Director of Institutions in other states. Information gained from this review is as follows:

Colorado

As the State of Colorado has included all of its charitable and penal institutions within one Department of Institutions, the supervising office is that of the Executive Director of the State Department of Institutions. The Executive Director is appointed by the Governor with the consent of the Senate, and serves at the pleasure of the Governor.

Minnesota

Those departments in Minnesota concerned with state charitable and penal institutions are the Department of Public Welfare and the Department of Corrections. The Commissioner of Public Welfare is appointed by the Governor, with the advice and consent of the Senate, for a four-year term. The Commissioner of Corrections is also appointed by the Governor, with the advice and consent of the Senate, for a four-year term.

Montana

Pursuant to a constitutional provision, the state statutes have created a Department of Institutions in Montana embracing all of the state's public institutions. The Governor is directed to appoint a Director of the Department of Institutions at the beginning of the gubernatorial term. This appointment is subject to confirmation by the Senate. The Director serves at the pleasure of the Governor.

Nebraska

The pertinent state agencies in the State of Nebraska are the Department of Public Institutions, the Department of Public Instruction, and the State Department of Correctional Services. The Director of the Department of Public Institutions is appointed by the Governor. The appointment is confirmed by a majority vote of the Legislature (unicameral legislature). The Nebraska Board of Public Instruction is an elected body that appoints the Chief Executive Officer of the Department of Public Instruction. The Director of the Department of Corrections is to be appointed by the Governor with the consent of the Legislature.

South Dakota

The South Dakota Constitution provides that the State Penitentiary, Hospital, Schools for the Feeble-minded and a Reform School are to be constituted under the control of the State Board of Charities and Corrections. The Constitution also provides that the State School for the Deaf and Blind shall be under the administrative control of the State Board of Regents. The five members of the State Board of Charities and Corrections are to be appointed by the Governor and confirmed by the Senate. The State Board of Regents is also appointed by the Governor and confirmed by the Senate.

Wisconsin

Administrative control of state institutions in Wisconsin is vested in two agencies: the Department of Health and Social Services, having control over state hospitals and correctional facilities; and the Department of Instruction, having control over the Schools for the Blind and Deaf.

There are two parts to the Department of Health and Social Services, one being the State Board of Health and Social Services, the other part being the administrative officer, the Secretary of the Department of Health and Social Services.

The members of the Board of Health and Social Services are appointed by the Governor and confirmed by the Senate for a six-year term. The Board of Health and Social Services then appoints the Secretary of the Department.

The Superintendent of the Department of Public Instruction is elected.

Wyoming

With the exception of the School for the Blind and Deaf which is administered by the Wyoming

State Board of Education, all state institutions in Wyoming are put under the general supervision of the State Board of Charities and Reform by the State Constitution. The Board of Charities and Reform is to be composed of the Governor, the Secretary of State, the State Treasurer, the State Auditor, and the Superintendent of Public Instruction. The Governor is appointed President. The members of the Wyoming State Board of Education are appointed by the Governor. The Board then appoints the Superintendent of the Department of Education, with the consent of the Governor.

PUBLIC AND INTERESTED CITIZENS INVITED

At the March 1, 1974, meeting, the Committee by motion asked that representatives of recipient groups and interested persons desiring to appear before the Committee be invited and encouraged to make presentations at the next meeting.

Mr. Vance Hill, a delegate to the North Dakota Constitutional Convention and a former Director of the North Dakota Law Enforcement Council, encouraged the Committee to consider a long overdue restructuring of government in North Dakota. He expressed hope that the Committee would realign the institutions under departments with related purposes. In his opinion, the present Director of Institutions' office supervises a series of unrelated institutions put together for unrelated purposes. Mr. Cameron Clemens, speaking as one who has worked in state government for the past 17 years in capacities including the Superintendent of the State Industrial School and as one who is also a parent of a retarded child, emphasized that the present system does not provide stability needed by the institutions. He recommended that the institutions under the Director of Institutions' office be assigned to those departments responsible for community programs which have a relationship to the institutions. Supreme Court Justice Robert Vogel, a representative of the Corrections Task Force of the North Dakota Criminal Justice Commission, recommended that a State correction-related department should be under one supervisory department. He reported that the Task Force recommends that the State Penitentiary and Farm, the State Industrial School, and the Department of Probation and Parole, be included in a unified Department of Corrections under the Director of Institutions office, with the Pardon Board and Parole and Probation office autonomous in their decision-making authority.

Dr. James K. O'Toole, speaking as a private citizen, a physician, and as a parent of a daughter at the Grafton State School, recommended that the Grafton State School and San Haven State Hospital

be assigned to the State Health Department, and that the School for the Deaf and the School for the Blind be placed under an educational department, and that the Industrial School, State Penitentiary, and State Farm be placed under a Department of Criminology. Dr. Thomas McDonald, PHD, Assistant Professor, North Dakota University, reported that for the State to efficiently and effectively deliver state services, it is his judgment that the State's charitable and penal institutions will be more appropriately located under an administrative organization established and designed to address the particular administrative requirements and specialized program needs. Mrs. Henry Horning, a mother of a Rubella deaf-blind child and a representative of the Parent Organization for Deaf-Blind Children expressed hope that the Committee would continue to have the Grafton State School, the School for the Blind and the School for the Deaf under the same department since she believes it would assure a flexibility in the programs so the children can be placed in the training and educational program best suited to their needs. The Executive Director of the North Dakota Mental Health Association reported that that Association was unable to speak at this time regarding a position relating to the Committee study. The Executive Director of the North Dakota Association for Retarded Citizens, Inc., reported by letter that he did not have a recommendation regarding the realignment of the State's charitable and penal institutions at the present time. He did, however, support further coordination for the mentally retarded through more cooperation among state agencies on the state level. Mr. Gerald Balzer, President of the North Dakota School for the Deaf Parent-Teacher-Counselor Organization and a parent of a deaf child, said his organization's position is that wherever the School for the Deaf might be placed, it is important that the quality of education not be reduced. In his organization's opinion, the educational program at the School for the Deaf is a quality program.

REPRESENTATIVES OF INSTITUTIONS COMMENT

The Executive Director of the State Employees Association reported that if a realignment of the State's charitable and penal institutions would provide and meet more of the needs of patients and those that deliver the services to patients, then such should be done. He also reported that his organization recommends more staff at the State's charitable and penal institutions.

Dr. Ronald Archer, Superintendent of the Grafton State School; Mr. Richard Charrier, Assistant Superintendent, San Haven State Hospital; Mr. Charles Borchert, Superintendent of

the School for the Blind; Mr. Allen Hayek, Superintendent of the School for the Deaf; and Penitentiary Warden Robert Landon encouraged the Committee to support the institutions under the present organizational relationship with the Director of Institutions' office. It was reported that needs that exist at the institutions are needs which can be satisfied by strengthening the institutions. Dr. Archer reported that mental retardation services need to be strengthened in the State Health Department, the State Department of Social Services, and the Director of Institutions' office, but that a rearrangement of the institutions is not necessary to accomplish this. In regard to concerns relating to the stability of the Director of Institutions' office, the comment was made that the directors of the State Institutions assume their responsibilities as set by law and not by the Director of Institutions. Mr. Reis Hall, Superintendent of the State Industrial School, advised that in regard to the operation of a state institution, professionals should be as close as possible to the client being served, and the support of state services should be as close to government as possible. Mr. Edward Klecker, Director of Institutions, expressed support for the present institutional arrangement. He reported that the Director of Institutions' office has brought administrative skills to the institutions. He indicated that the office is conversant in institutional programs, but that it hires people at the institutions to be program experts. He expressed pride in the manner in which the Director of Institutions' office has employed the persons holding key positions at the institutions. The persons he reported have been employed on the basis of recommendations from committees consisting of people with broad experience and background in the areas relating to the services delivered by the institutions. He also reported that his office recommends the establishment of a Division of Corrections to be included within his office. He indicated that eventually a Division of Corrections will have to be established or the State will not be eligible for federal funding for some of its corrections programs. He concluded his remarks by stating that whatever the Committee recommends, it should only be recommended if services will be improved.

RECOMMENDATIONS

The Committee does not recommend a plan of reorganization affecting all of the charitable and penal institutions of the State. The Committee by motion agreed that it is very difficult to make such a change when broad reorganization of executive departments is needed on the state level requiring in some instances constitutional revision. The Committee does, however, recommend a bill transferring the Grafton State School and the San Haven State Hospital from the Director of Institutions' Office to the Mental Health and Retardation Division of the

State Health Department. The basis for the recommendation was the restatement of the many reasons suggested to the Committee in previous reports and recommendations which it gathered from testimony during the study. The principal reason for the change is the need to coordinate the activities of the Grafton State School with the organized community programs under the general supervision of the Health Department. The current emphasis at the Grafton State School to deinstitutionalize the programs for the mentally retarded suggests the need for a close relationship with the local comprehensive mental health and retardation centers. The support for the bill was not unanimous among Committee members. Some Committee members expressed support for transferring all of the state institutions to program-related departments. Some Committee members also indicated their support for a Department of Corrections; however, the Com-

mittee did not pass motions supporting these positions.

The Committee concluded its work by expressing its appreciation to the Director of Institutions' office and the institutions under its control for their cooperation with the Committee during its study. It also complimented the manner in which the various institutions are being operated and the conditions found at the institutions during the Committee tours. It expressed the hope that the heads of the institutions realize that the Committee respects them as administrators and recognizes they are doing an excellent job; however, the action taken by the Committee is based upon what the majority of the Committee believed to be in the best interests of the people to be served in the future by the institutions.

EXHIBIT "A"

SCHOOL FOR THE BLIND, SCHOOL FOR THE DEAF, AND THE STATE INDUSTRIAL SCHOOL

	School for the Blind	Per-student cost per year	School for the Deaf	Per-student cost per year	State In- dustrial School	Per-student cost per year
Number of Students	36		101		110	
	(1973-74 Enrollment)		(1973-74 Enrollment)		(Average Daily Pop.)	
Number of Staff Members	26		63		71	
Ratio of Students to Staff Members	1.4 to 1		1.6 to 1		1.5 to 1	
Total Budget 1973-75 Biennium 1/	\$437,590	\$6,078	\$1,328,446	\$6,576	\$1,961,975	\$8,918
Estimated Income 2/ Federal Funds	\$ 36,378	\$ 505	\$ 125,000	\$ 619	\$ 301,521	\$1,371
Foundation Program Payments	41,200	572	131,000	648	183,153	
Interest & Income	66,000	917	96,000	475		832
Meals, Rentals, Miscellaneous	8,800	122	25,140	125		
Land Sales & Insurance Recovery			15,600	77		
Sale of Manufactured & Agricultural Prod.						
Cost of Care & Collection						
Emergency Commission Contingency Fund						
Total Estimated Income	\$152,378	\$2,116	\$392,740	\$1,944	\$484,674	\$2,203
General Fund Appro- priation	\$258,212	\$3,962	\$935,706	\$4,632	\$1,477,301	\$6,715
Total Budget Cost Per Student Per Day (365 Days)	\$16.65		\$18.02		\$24.43	
General Fund Cost Per Student, Per Day (365 Days)	\$10.85		\$12.69		\$18.39	
Federal Cost Per Student, Per Day (365 days)	\$ 1.38		\$ 1.70		\$ 3.76	

1/ Includes Emergency Commission Action to April 17, 1974.

2/ Estimated income data was provided by the Director of Institutions' office.
This data is updated to April 17, 1974, and includes Emergency Commission action to that date.

EXHIBIT "B"

GRAFTON STATE SCHOOL, SAN HAVEN STATE HOSPITAL, AND STATE PENITENTIARY

	State Penitentiary	Per-inmate cost per year	Grafton State School	Per-student cost per year	San Haven State Hospital	Per-patient cost per year
Number of Residents or Inmates	189		1,151		290	
	(1973 Average Pop.)		(Oct. 1, 1973)		(July 1, 1973)	
Number of Staff Members	101		506		242	
Ratio of Residents or Inmates to Staff Members	1.9 to 1		2.3 to 1		1.2 to 1	
Total Budget 1973-75 Biennium 1/	\$3,727,553	\$9,861	\$8,998,111	\$3,909	\$3,639,223	\$6,275
Estimated Income 2/ Federal Funds	\$485,608	\$1,285	\$1,092,827	\$475		
Foundation Program Payments						
Interest & Income						
Meals, Rentals, Miscellaneous	24,000	63	67,000	29	92,618	160
Land Sales & Insurance Recovery	350,000	926				
Sale of Manufactured & Agricultural Prod.	618,400	1,636				
Cost of Care & Collection	24,000	63	948,500	412	160,000	275
Emergency Commission Contingency Fund	3,000	8				
Total Estimated Income	\$1,505,008	\$3,981	\$2,108,327	\$ 916	\$ 252,618	\$ 435
General Fund Appropriation	\$2,222,545	\$5,880	\$6,889,784	\$2,993	\$3,386,605	\$5,840
Total Budget Cost Per Resident or Inmate, Per Day (365 days)	\$27.02		\$10.71		\$17.19	
General Fund Cost Per Resident or Inmate, Per Day (365 days)	\$16.11		\$ 8.20		\$16.00	
Federal Cost Per Resident or Inmate, Per Day (365 days)	\$ 3.52		\$ 1.30		-0-	

1/ Includes Emergency Commission Action to April 17, 1974.

2/ Estimated income data was provided by the Director of Institutions' office.

This data is updated to April 17, 1974, and includes Emergency Commission action to that date.

JUDICIARY "A"

House Concurrent Resolution No. 3006 of the Forty-third Legislative Assembly directed the Legislative Council to continue its substantive and formal study and revision of the criminal statutes of North Dakota. This study was assigned to the Committee on Judiciary "A" consisting of both legislative and citizen members. The legislative members of the Committee were: Senators Howard A. Freed, Chairman, and H. Kent Jones; Representatives Milon Austin, Peter S. Hilleboe, Henry Lundene, Jack Murphy, Duane Rau, Alvin Royse, and Mrs. J. Lloyd Stone.

Citizen members of the Committee were: retired Supreme Court Judge Obert Teigen; District Judge Douglas Heen; Gerald Glaser, Judge of the Burleigh County Court with Increased Jurisdiction; Municipal Judge Harry J. Pearce; Professor Thomas Lockney, School of Law, University of North Dakota; Chief Edwin Anderson, Fargo Police Department; Sheriff Glen Wells, Pembina County; and Messrs. Rodney S. Webb and Albert A. Wolf, attorneys at law.

The Committee's work was funded in part by a federal grant in an amount of \$77,859 obtained through the Combined Law Enforcement Council. The Committee's work was carried out during 14 meetings, or 26 Committee working days.

The report of the Committee on Judiciary "A" was submitted to the Legislative Council at the biennial meeting of the Council held at Bismarck. The report and recommended legislation were adopted for submission to the Forty-fourth Legislative Assembly by the Legislative Council in November 1974.

INTRODUCTION AND BACKGROUND

The Forty-third Legislative Assembly passed Senate Bill No. 2045 (and a companion bill defining sexual offenses — Senate Bill No. 2049) which entirely revised the basic Criminal Code. The revision included creation of an offense classification section which classified offenses into five types, three types of felony and two types of misdemeanor. Senate Bill No. 2045 will take effect on July 1, 1975. The Forty-third Legislative Assembly also passed a concurrent resolution calling for a continuing study and revision of all of the other sections in the Century Code (outside of Title 12) which define crimes. The principal purposes of the continuing study were to revise the other sections to make them accord with the offense classification format established in Senate Bill No. 2045, and to provide a forum for comments and criticisms on Senate Bill No. 2045 so that amendments to it could be made prior to its effective date.

The work of the Committee during this interim falls into three principal areas, with several subsidiary areas. The first and foremost area of Committee concern was with substantive and formal revision of all of the sections in the Century Code which presently define criminal offenses. The Committee reviewed each and every section and is recommending a bill which will amend 597 existing sections of the Century Code and repeal 245 existing sections.

Because of the length of the main revision bill, it will not be discussed in this report on a section-by-section basis. Instead, a section of this report will be devoted to the highlights of that bill, as well as the Committee's philosophy followed in recommending amendment or repeal.

The second main area of Committee concern was in soliciting and receiving comments and criticisms about the new Criminal Code contained in Senate Bill No. 2045. The Committee received a great deal of input from law enforcement officers during the interim, and is recommending a bill, to be discussed later in this report, revising several sections of the new Criminal Code.

The third major area of Committee concern was with the drafting of legislation to control the dissemination of obscene materials, and the prevention of obscene performances. Because of the recent Supreme Court decision in *Miller v. California*, the Committee felt it necessary to take action with respect to control of obscene materials, as the sections enacted last Session, found in the new Criminal Code, did not meet the new constitutional tests set out in the *Miller* case, and were, in fact, probably stricter than the *Miller* tests. After extended hearings and consideration of several drafts, the Committee is recommending a bill which will be discussed later in this report.

The Committee procedure utilized in considering the revision of the numerous sections scattered throughout the Century Code was as follows:

1. The staff would draft proposed amendments and repeals with respect to an entire title of the Century Code.
2. The staff would contact the heads of state agencies which had an interest in the subject matter of a particular Title of the Code, and would visit with that agency head, or his representative, concerning the staff proposal.
3. The staff would invite the agency head or his representative to attend a Committee

meeting at which the Title was to be discussed.

4. The meeting would be held, and the proposed amendments would be discussed with the agency head, and his suggestions and criticisms would be taken.

MAIN REVISION BILL

Before commencing discussion of the bill, it is necessary to discuss the Committee's recommendation regarding creation of an "infraction" offense. During the last interim, the Committee on Judiciary "B", while drafting the new Criminal Code, considered the addition of an offense classification known as "violation" to cover those instances in which criminal penalties should, in the belief of the Legislature, be imposed, but where a jail sentence should not be available. As the 1971-73 study interim drew to a close, the Committee on Judiciary "B" could not reach an accord on adoption of the "violation" classification.

The current Committee adopted the "infraction" classification as one of its first orders of business. That classification will be discussed in more depth in the next section of this report, but suffice it to say that the maximum fine which can be assessed for an infraction is \$500, and a person guilty of an infraction cannot be incarcerated as a punishment. (Note: A person can be incarcerated, under the provisions of the new Criminal Code, for willful failure to pay a fine.) The infraction offense classification was adopted primarily to provide a means of classifying the numerous "regulatory" offenses which are sprinkled throughout the Century Code.

The Committee's objectives in carrying out the revision are summarized in the following paragraphs.

The first aim of the Committee was to reclassify all criminal sections (outside of Title 12.1) in accordance with the penalty classification format, as amended by the Committee. This aim included a desire by the Committee to make penalties equal for similar offenses. Further, the Committee also tried to equalize penalties for offenses which were similar in gravity, in the judgment of the Committee. The Committee was in an excellent position to do this, since it reviewed, in the court of the interim, every criminal section in the Century Code.

The second general philosophy (or aim) of the Committee was to delete or repeal those criminal statutes currently in force which are outmoded or unnecessary. This aim also included the Committee's desire to delete criminal liability in those instances where civil liability might be more appropriate, or

where criminal liability simply was not necessary with respect to a particular type of action.

A third aim of the Committee, reflected in the main revision bill, was to repeal or amend existing sections in favor of the general criminal sections contained in the new Criminal Code. An example of this would be repealing a section which makes it a crime to obstruct the Agriculture Commissioner in carrying out a certain governmental function in favor of the section in the new Criminal Code which prohibits, in general terms, obstruction of any governmental function. Another example would be deletion of a provision making it an offense to falsify a report to the Agriculture Commissioner in favor of a general section in the Criminal Code prohibiting falsification in governmental matters.

The fourth principal aim of the Committee is to make specific offenses, not covered in the Criminal Code, as general and comprehensive as possible. An example is the creation of Section 16-01-17 which lists numerous offenses relating to obstruction of electors or fraudulent alteration of ballots, or obstruction of election procedures, and then classify them as either Class A misdemeanors or Class C felonies. This section results in a recommendation to repeal several sections of the Code, and is stated in more general language, thus allowing the prosecutor an easier task in determining the appropriate section under which to charge an alleged offender.

Because of its huge size, it would be impossible to discuss the main revision bill in this report in detail, and such a discussion would be tremendously repetitive and boring. A great number of the amendments made are simply to delete reference to a specific potential maximum punishment and to insert, in lieu thereof, a specific offense classification, e.g., Class A misdemeanor, etc.

The changes next most often made were to delete references to attempts to commit a particular act, and references to falsification of particular documents provided to particular governmental agencies. The reasons for these deletions, in both cases, is because the new Criminal Code covers the topic generally. Attempts, and other inchoate offenses such as solicitation or facilitation, are defined generally in the new Criminal Code, and it is unnecessary to repeat, throughout the Century Code, that an "attempt" to commit a particular offense is in itself an offense.

The same is true with respect to falsification of a particular report to a particular agency. The Criminal Code contains a general section (12.1-11-02) which prohibits falsification of any kind in a "governmental matter". A matter is defined to be a "governmental matter" if it is within the jurisdiction of a government office or agency, or of an office,

agency, or other establishment in the legislative or judicial branch of government.

Another major type of revision to existing sections was to delete statutes, or references in statutes, which would penalize a particular public official, or governmental employee, for not performing a duty imposed upon him by law. The new Criminal Code contains a general provision which makes it a Class A misdemeanor for a public servant to knowingly refuse to perform any duty imposed on him by law. The Committee feels that that provision is adequate, and should substitute for any specific statutory provisions relating to one governmental agency, and one, or a very few, specific duties.

Another major reason for revision was to delete or amend those current sections which define offenses covered by the new general theft chapter of the Criminal Code (Chapter 12.1-23). Theft is broadly defined in the new Criminal Code, and encompasses all of the current offenses wherein the property of one man is unlawfully taken, such as embezzlement, false pretenses, extortion, larceny, and misappropriation of public funds, among others.

Other general offense definitions in the new Criminal Code which resulted in several amendments in existing offense definition statutes include the general crime of obstructing or hindering a governmental function, and the general offense of disclosure of confidential information. In regard to the latter general offense, "confidential information" is defined as information made available to the government under a governmental assurance of confidence. An example is the information provided to the Tax Department in an income tax return.

In following through with its amendments to accord with the offense classification format, the Committee proposed amendments to Section 61-28-08. The amendments would classify two subsections in that section as Class A misdemeanors. Section 61-28-08 is in the chapter of the water laws which deals with water pollution control. The Federal Water Pollution Control Act requires that state penalties match federal penalties in order for the State to be allowed to operate its own water permit system.

The Chairman of the Committee has written to the North Dakota Congressional Delegation asking that the federal law be changed so as to allow North Dakota to adhere to its offense classification format. If this change is not made prior to or during the 1975 Session, Section 61-28-08 should be amended so that the penalty provisions therein accord in language with the penalty provisions contained in the Federal Water Pollution Control Act. This change is being recommended, although it violates the Committee's revision philosophy, in order to allow the State to operate a water pollution permit program, rather

than relinquishing operation of that program to the Federal Government.

One last reason for change should be mentioned. The new Criminal Code establishes five standards of culpability, i.e., intentionally, knowingly, recklessly, negligently, and willfully. The latter standard encompasses the first three standards. Because culpability standards have never previously been codified, there are numerous ways of phrasing them shown in existing offense definition sections throughout the Criminal Code. The Committee's revision effort changes all nonconforming standards of culpability to one of the five standards set out above.

REVISION OF SENATE BILL NO. 2045

As mentioned earlier in this report, one of the first actions the Committee took was to create an offense classification known as infraction. The maximum fine which can be imposed upon conviction of an infraction is \$500. Of course, no jail or prison sentence can be imposed, but all of the other sentencing alternatives available under the new Criminal Code, e.g., restitution, probation, etc., are available upon conviction of an infraction. The definition of infraction goes on to provide that any person who has been convicted of an infraction and has, within one year previously, been convicted of another infraction may be sentenced as though convicted of a Class B misdemeanor, i.e., may be sentenced to jail. However, if the prosecution intends to seek punishment as a Class B misdemeanor, then the complaint is to specify that the offense is a misdemeanor, and of course the right to counsel for an indigent defendant would apply.

All procedural provisions relating to the trial of criminal cases provided by statute or rule are to be applied to the trial of an infraction. However, a person charged with an infraction is not entitled to counsel at public expense nor to a trial by jury, unless he is potentially punishable by imprisonment.

Additionally, all rules of arrest, the jurisdiction of courts, the statutes of limitations, and the burden of proof which apply to misdemeanor charges shall also apply to infraction charges. If an offense definition provides that conduct is an infraction, and does not specifically include a requirement of culpability, no culpability is required. Thus, offenses could be defined, and are in the main revision bill, for which a person could be found guilty solely upon proof that the act was committed and that the alleged offender committed it. This provision of strict criminal liability is useful with respect to many minor administrative offenses.

The definitions section of the new Criminal Code was also revised slightly to redefine the terms

“dangerous weapon”, “person”, and “public servant”; and to create a definition for the phrase “political subdivision”. With the exception of the definition of “dangerous weapon” the other two definition amendments, and the created definition will apply not only to the new Criminal Code, but also to any statute throughout the Century Code which defines an offense. “Political subdivision” is defined as a county, city, school district, township, and any other local governmental entity created by law. It is the intent of the Committee that the term “political subdivision” will include any governmental entity not funded by legislative appropriations and recognized in state law.

The definition of “dangerous weapon” is extended to include bows and arrows, crossbows, spears, spring guns (including so-called zip guns), “b.b. guns”, air rifles, and CO₂ guns. The definition is also phrased in such a way that it is not limited to any of the named devices, but can include similar but unnamed devices.

In addition to creating an infraction classification, the Committee also recommends a new section be added to the Criminal Code setting forth special organizational fines. An “organization” is defined to include corporations, cooperatives, and other business entities. The maximum fine structure for organizations is set up as follows: for a Class A felony — \$50,000; for a Class B felony — \$35,000; for a Class C felony — \$25,000; for a Class A misdemeanor — \$15,000; and for a Class B misdemeanor — \$10,000. Of course, individuals who can be held accountable for corporate action could also be tried, and if convicted could be sentenced to prison. The corporate fine schedule was developed by the Committee with a primary view towards deterring corporate offenders from violating such regulatory statutes as those relating to pollution, reclamation, etc.

The last Legislature, upon recommendation of the previous criminal statutory revision committee, enacted Section 12.1-01-05 which provides that crimes defined by state law shall not be superseded by city ordinance, by a city home rule charter, or by an ordinance adopted pursuant to a home rule charter. During the course of the interim, the Committee was apprised of the fact that some were construing that enactment as precluding cities from enacting ordinances containing penal language. In order to assure that that construction was not followed, the Committee is recommending an amendment to that section to provide specifically that the section was not intended to preclude any city from enacting a penal ordinance when it is otherwise authorized to do so by law. For instance, Subsection 15 of Section 40-05-02 authorizes cities to prohibit the operation of motor vehicles by persons

under the influence of intoxicating liquor or narcotics.

The Committee considered several existing sections dealing with harassing or threatening communications, which sections are presently contained in the Century Code (see Sections 8-10-07.1 and 49-21-21). The Committee has recommended the sections currently in the Century Code for repeal, and is amending Section 12.1-17-07 to incorporate desirable provisions of the two sections repealed (8-10-07.1 and 49-21-21). Representatives of Northwestern Bell Telephone Company were consulted concerning this change, and did, in fact, request, that the desirable provisions of the two sections to be repealed be included in Section 12.1-17-07.

That section provides that a person is guilty of an offense if he communicates, in writing or by telephone, a threat to inflict any injury on any person, to any person’s reputation, or to any property; makes an anonymous phone call or a call using offensive language; or makes repeated phone calls with no purpose of legitimate communication; or communicates in writing or by phone a falsehood, and thereby causes mental anguish. If the offense is communicating a threat, it is a Class A misdemeanor. Otherwise the offense is a Class B misdemeanor. If the offense charged involved the use of a telephone, the prosecution may deem the offense to have been committed at either the place at which the telephone call was made, or the place at which it was received.

In the latter months of the study, the staff counsel for the Committee was in close conduct with representatives of the Peace Officers Association, and attended the annual convention of that association. The association indicated support for the new Criminal Code, but presented a list of proposed amendments for the Committee’s consideration.

The Committee considered each proposed amendment in depth and heard presentations from representatives of the Peace Officers Association concerning each. The Criminal Code revision bill contains many proposed amendments to sections of the new Criminal Code resulting from recommendations of the Peace Officers Association.

Amendments recommended by the association and accepted by the Committee include repeal of the current section in the Criminal Code (Section 12.1-02-04) which provides that a person does not commit a particular offense if, at the time he engages in the conduct charged, he is ignorant or mistaken about a matter of fact or law and the ignorance or mistake negates the culpability required for commission of that offense. The Peace Officers Association was opposed to continuing that section in the Criminal

Code on the basis that it seemed to imply that ignorance of the law might excuse otherwise criminal activity. Because the Committee felt that the section simply stated a truism, it agreed to repeal it in order to ensure that no one was confused into thinking that ignorance of the law might justify criminal action. Additionally, the Committee recognized that Subsection 5 of Section 12.1-02-02 is essentially a restatement of the old maxim that "ignorance of the law is no excuse".

Another section amended at the request of the Peace Officers Association dealt with the self-defense justification for use of force. As the section presently reads, a person is not justified in using force in self-defense for the purpose of resisting arrest, but excessive force on the part of the arresting officer may be resisted.

The Peace Officers Association desired that the reference to resisting excessive force be deleted. It was their belief that that language would be an open invitation to a person about to be arrested to resist. This belief was based on the fact that the language suggests that the person about to be arrested is the sole judge of what is excessive force. The proposed Committee amendment would delete the language authorizing resistance to excessive force.

The next proposed amendment is within the section setting forth instances in which the use of deadly force was justified. Presently, that section contains a provision authorizing a public servant authorized to affect arrests to use deadly force to affect the arrest or prevent the escape of a person who has committed or attempted to commit a "felony involving violence". The Peace Officers Association indicated that it would like to see the words "involving violence" deleted from the section, as that puts too great a burden on the peace officer to make the determination as to what type of felony the fleeing person might have been involved in. The Committee is recommending that amendment.

The next proposed amendment is with respect to the conditions of probation which may be imposed by a court when it places a convicted offender on probation. Presently, the section provides that one of the conditions which may be imposed is that the probationer must submit his person, vehicle, and home to search and seizure by a probation officer at any time of the day or night, with or without a search warrant. The Peace Officers Association desired to expand the scope of this probation condition to include the possibility that the judge could condition probation upon the fact that the probationer submit to those searches by sheriffs, deputy sheriffs, police officers, or employees of the Bureau of Criminal Investigation, in addition to probation officers. After considerable debate, and with some dissent, the Committee is recommending

an amendment to Subdivision o of Subsection 2 of Section 12.1-32-07 in accordance with the desires of the Peace Officers Association.

The next recommendation made by the peace officers was with reference to Section 12.1-03-01 which defines accomplice liability. Presently, the section provides that a person can be convicted of an offense based upon the conduct of another when he has a legal duty to prevent its commission, and fails to make proper effort to do so. The association thought that the total language with reference to the legal duty and failing to make a proper effort should be deleted, as it might be implied that the Attorney General would be in violation of this statute whenever he didn't make a proper effort to prevent an offense. During the course of the discussion, it was noted that perhaps the real problem was with the phrase "having a legal duty to prevent its commission". With that discussion in mind, the Committee is recommending an amendment to that section to limit accomplice liability to situations wherein a person has a statutory duty to prevent commission of a particular offense and then fails to make a proper effort to do so.

The Peace Officers Association objected to the current wording of the section dealing with conduct which prevents, or attempts to prevent, an arrest. Presently, the section provides that a person is guilty of a Class A misdemeanor if he creates a substantial risk of bodily injury to a public servant while taking action intended to prevent his arrest, or the arrest of another. The association felt that a differentiation should be made in that section based on the type of offense involved. In accordance with the association's desires, the Committee is proposing an amendment to Section 12.1-08-02 to make it a Class A misdemeanor to prevent the arrest of someone when that arrest is for a misdemeanor or infraction, but to make it a Class C felony if the alleged offender is attempting or does prevent the arrest of himself or another for a felony.

The association was interested in providing criminal liability for giving false information or a false report to a law enforcement officer with knowledge that the information or report is false. Therefore, it proposed an amendment to Section 12.1-08-03 to add a new subdivision making it either a Class C felony or Class A misdemeanor to give false information or a false report to a law enforcement officer, when the person giving such information or report knows it to be false. The Committee accepted this recommendation. The difference in gradation depends upon what type of offense is the subject of the false report.

Under the new Criminal Code, it is a Class B misdemeanor to impersonate a public servant and act as if to exercise his authority. The Code defines a

public servant to include a law enforcement officer. The Peace Officers Association desired that the section differentiate between public servants in general and law enforcement officers, and to increase the penalties for impersonating a law enforcement officer. The Committee accepted that recommendation and is adding another subsection to prohibit the false impersonation of a law enforcement officer, and making such impersonation a Class A misdemeanor.

The new Criminal Code modifies the present North Dakota law codifying the "felony-murder" rule. Under present North Dakota law, a person who is engaged in a felony is guilty of murder if another person is killed, and the action of the person engaged in a felony is causative of that death. The person engaged in the felony is guilty of murder even though the person killed is a co-participant in the felony. The new Criminal Code provides that a person is not guilty of "felony-murder" if the person killed is one of his co-participants. The Peace Officers Association believes that the section should be amended to return to the current North Dakota "felony-murder" rule. The Committee agreed and is amending Subsection 3 of Section 12.1-16-01 to delete the exception for death of a co-participant.

Assault on a peace officer under the new Criminal Code is a Class C felony when the peace officer is "on duty" and the aggressor knows that to be a fact. The Peace Officers Association desired that the words "on duty" be deleted and that the words "acting in an official capacity" be substituted therefor. They noted that a law enforcement officer is theoretically able to act in an official capacity even though he is not strictly "on duty". When he is acting in an official capacity he should have the additional protection provided by the present assault section. The Committee accepted this recommendation and is proposing an appropriate amendment to Section 12.1-17-01.

Another association recommendation adopted by the Committee had to do with the section prohibiting "stowing away". Presently, that section would make it a Class A misdemeanor to stow away on a vessel or aircraft. The association recommendation is that the words "vehicle" and "train" be added to the section, so that it will also be a crime to stow away on a vehicle and train as well as on a vessel or aircraft.

The section in the Criminal Code which deals with unauthorized use of a vehicle (joy-riding) sets forth a defense to prosecution in the event that the accused person "reasonably believed that the owner would have consented had he known the conduct in which the prosecution" is based. The Peace Officers Association wanted that language removed, as they felt that was a defense which went too far, and

additionally, would be utilized, whether a valid defense or not, in every case. The Committee accepted the recommendation of the association, and is deleting Subsection 2 of Section 12.1-23-06.

The new Criminal Code provides that one of the defenses to a charge of theft is that the actor honestly believed that he had a claim to the property or services involved which he was entitled to assert in the manner which forms the basis for the charge against him. The association desired this defense to be removed as they felt that it would be used by defendants in an inappropriate manner. The Committee concurred, believing that the defense simply states a truism in any case. If the actor has an honest belief that he had a claim to the property involved, that will be a defense to a charge of theft regardless of whether or not the statute says so. This is true because the definition of theft includes an intent to deprive another of his (the other's) property. Such an intent cannot exist if the alleged offender believes that he has a rightful claim to the property.

The Peace Officers Association recommended amendment to the section prohibiting the supplying of firearms for use in a riot, or being armed with a firearm while engaging in a riot. They desired the section amended to include the term "dangerous weapon" in addition to the terms "firearm" and "destructive device", so that supplying a dangerous weapon of any kind for use in a riot would constitute the offense. The Committee accepted that recommendation.

The Committee engaged in extensive discussion concerning the Peace Officers Association recommendations on the Criminal Code section prohibiting indecent exposure. The association desired that the section prohibit exposure of a person's genital organs when that conduct was likely to be observed by a person who would be offended or alarmed, regardless of the intent of the alleged offender. The present draft requires that the alleged offender have an intent to gratify his own, or another's, sexual desire. The Committee recommendation is a compromise between the Peace Officers Association recommendation and the current provisions. Exposing one's genitals with intent to gratify or arouse sexual desire will be a Class A misdemeanor. Exposing one's genitals without any particular intention in situations in which the exposure is likely to be observed by a person who would be offended or alarmed will be a Class B misdemeanor.

The next association recommendation has to do with the definition of a "gambling house" in the chapter in the new Criminal Code prohibiting gambling. That definition contains a presumption that any place where gambling apparatus is found is presumed to be a gambling house, unless the ap-

paratus found are cards, dice, or other games, and they are found in a private residence. The peace officers desired that the language which dealt with the finding of cards, dice, or other games in a private residence be deleted, as it tended to dilute the strength of the presumption. During the course of discussion on this recommendation, it was noted that without that exception, the finding of cards or dice in a private home would give rise to a presumption that that home is a "gambling house", and therefore that the persons living there could be charged with operating a gambling house. With this in mind, the Committee is recommending that the entire presumption be stricken from the definition of "gambling house". This recommendation was made over the dissent of some members of the Committee who felt that the presumption should be retained as it could be of value to prosecutors in certain instances.

The final recommendation of the association, accepted by the Committee, was with respect to the section in the new Criminal Code which propounds a philosophy in favor of concurrent sentences, rather than consecutive sentences. The association believes that the Legislature should not set forth a statutory philosophy favoring concurrent sentences, but should leave that determination, i.e., whether sentences are to be concurrent or consecutive, solely in the discretion of the sentencing judge. The Committee is proposing that Subsection 1 of Section 12.1-32-11 be deleted in accordance with the association's recommendations.

Other important changes contained in the bill draft amending the basic Criminal Code include a provision that, upon motion of the defendant, the court can order a term of imprisonment to commence at some time other than at the time of sentencing. This amendment was recommended by one of the district judges who appeared before the Committee with comments on the new Criminal Code. The amendment would allow a judge to sentence a farmer, for instance, to a sentence of imprisonment upon conviction of a crime, but would allow the farmer to complete his harvest if the judge thought that appropriate in the particular situation at hand.

In order to ensure that the policy of the new Criminal Code with respect to minimum sentences is effectuated, the Committee is recommending an amendment to the basic sentencing statute to specifically provide that courts shall not sentence to minimum terms of imprisonment. The previous interim committee intended that to be the case, but comments received since the Criminal Code was enacted indicated that there was some doubt that the new Criminal Code would be construed to abolish minimum sentences.

The final important recommendation of the Committee with respect to Senate Bill No. 2045 had

to do with the section which sets forth the sentencing alternatives available to the court. Presently, that section does not include the assessment of reasonable costs against a convicted defendant. The Committee, after considerable debate, and over the objection of those who thought that assessment of costs places an unconstitutional burden on the defendant's right to a jury trial, is recommending an amendment to authorize assessment of reasonable costs as one sentencing alternative, to be used alone or in combination with other sentencing alternatives. The Committee is further amending that same section to ensure that the current deferment of sentence imposition procedures remain unchanged as a result of adoption of the new Criminal Code.

The bill also makes other grammatical and formalistic changes which will not be discussed at length in this report.

OBSCENITY CONTROL LEGISLATION

Following the decision of the U.S. Supreme Court in *Miller v. California*, the Committee realized that the obscenity control provisions contained in the new Criminal Code should be revised, as the definitions of obscenity contained therein did not comport with the *Miller* tests. Additionally, the Committee was aware that the current North Dakota obscenity control statutes had been held unconstitutional by the federal district court in *McCrigh v. Olson*.

Therefore, the Committee commenced hearings on a bill draft to simply revise the current provisions of the Criminal Code (Chapter 12.1-27). At the first of three meetings at which the subject was discussed the Committee received two additional alternative drafts from private citizens. The first draft would have provided criminal penalties only for disseminating obscene materials to minors. The second alternative received by the Committee provided that the question of the obscenity of particular materials should be civilly determined prior to any criminal charges being made.

The Committee rejected the suggested draft, based on a recently enacted South Dakota law, which would have limited criminal liability to instances where people had distributed obscene materials to minors. The Committee, however, was interested in the prior civil determination procedure and directed the staff to draft legislation incorporating the prior civil determination procedure for allegedly obscene books and materials.

At the hearing on that draft, testimony was taken which indicated a desire to include motion pictures, sound recordings, and pictures within the prior civil determination procedure. The Committee then directed the staff to redraft the obscenity

control bill to extend the range of the prior civil determination proceedings to cover books, magazines, pictures, sound recordings, and motion pictures.

This was done, and the Committee now recommends a bill which would define four types of criminal activity: First, dissemination of obscene material (a Class A misdemeanor); second, the presenting or directing of an obscene performance (a Class A misdemeanor); third, permitting an obscene performance in a liquor establishment, or participating in an obscene performance in a liquor establishment (a Class A misdemeanor); and fourth, promoting obscene materials to minors (a Class C felony).

The bill defines obscene material or obscene performance as material or a performance which, taken as a whole, the average person applying North Dakota standards would find predominately appeals to a prurient interest; depicts or describes sexual conduct in a patently offensive manner; and, taken as a whole, lacks serious literary, artistic, political, or scientific value.

The term "material" is defined as meaning any physical object used as a means of presenting or communicating information or emotion to, or through, a human being's receptive senses. The definition includes, but is not limited to books, sound recordings, films, and pictures. The term "book" is defined as meaning books, magazines, pamphlets, newspapers, or other articles made out of paper and containing printed, typewritten, or handwritten words.

Before a criminal prosecution for dissemination of obscene material (but not for presenting an obscene performance) can be commenced, the material in question is to have been adjudged obscene in a civil proceeding carried out in accordance with the bill's provisions. A civil proceeding for a determination of obscenity may be instituted by any law enforcement officer who believes that a person is disseminating or will disseminate obscene material.

When such a civil action is commenced, any person about to disseminate the same materials may intervene in the civil proceeding as a matter of right, and shall have all the rights of an original party to the proceeding, and will be bound by any judgment entered therein. Additionally, the law enforcement officer is to give actual prior written notice to any other person whom he wishes to make a "constructive" defendant.

The bill provides that a district judge may issue a search warrant to seize a single copy of the allegedly obscene material to be used as evidence in the civil, and any possible criminal, proceeding. However, if

only a single copy of the material is available within the jurisdiction, the defendant is either to provide a duplicate or make the original available for duplication, at county expense, by the court during time periods when the material is not on sale or exhibition. If only a single copy is available and it is impossible or impractical to duplicate it, the defendant is immediately to make the single copy available for viewing by the court, and subsequently available for viewing at the trial.

The civil proceeding itself, at the request of either party thereto, may be tried either to the court, or to an expanded district court consisting of three district judges chosen by the Chief Justice of the Supreme Court. When an expanded district court is demanded by either party, the district judge before whom the proceeding was initially brought is to notify the Chief Justice of that fact, and the Chief Justice is to appoint, within a five-day period, two other district judges to sit with the original district judge.

If either party to the proceeding, or an intervenor, is aggrieved by the court's decision, that decision may be appealed to the Supreme Court in the manner provided in the rules of appellate procedure.

If the trial court finds the material not to be obscene, it is to enter a declaration to that effect and dismiss the suit. If it finds the material to be obscene, it is to so declare and enter the declaration in the judgment. Additionally, the court can issue a permanent injunction against sale or dissemination of the material, if found obscene, which injunction, if violated, can be punished as a criminal contempt.

A declaration of obscenity contained in the judgment issued in the civil action may be used to establish that a defendant, an intervenor, or a constructive defendant had knowledge of the type of material that he was distributing and that it was obscene, if he subsequently distributes the same material found to be obscene in the civil proceeding. In order to bind persons who were not actual defendants or intervenors, the appropriate law enforcement officer must give them actual written notice of the final judgment. That action then perfects a potential disseminator's status as a constructive defendant.

In those instances where the material itself, or the manner in which it is being disseminated, poses a clear and present danger to minors, the appropriate law enforcement officer can petition the district court for a preliminary injunction prohibiting dissemination. The Committee felt that this provision was important to protect against instances such as the dissemination of obscene materials on school grounds, etc.

If material is declared, in a civil proceeding, to be obscene in one jurisdiction in the State, and not obscene in another, there is to be no criminal prosecution based on the declaration of obscenity until the matter shall have been finally resolved by the Supreme Court. Any party to either proceeding, including constructive defendants, is to have the right, when such a conflict exists, to petition the Supreme Court to finally determine the question.

The criminal provisions of the bill relating to dissemination or promotion of obscene material (but not to presentation of obscene performances) shall not apply to instances where that material is possessed or distributed in the course of law enforcement, judicial, or legislative activities; nor shall those criminal sections apply to instances where the material is possessed by a bona fide school, college, university, museum, or public library for limited access for educational research purposes which are carried on at the institution. Finally, the criminal provision shall not apply when the local dealer is returning material, determined to be obscene in a civil proceeding, to the distributor or publisher from which it was originally received.

The bill draft provides that its regulation of the dissemination of obscene materials or the presentation of obscene performances is to be uniformly applicable throughout the State, and no city is authorized to enact new, or enforce existing, ordinances which also prohibit the dissemination of obscene materials, or control obscene performances. To effectuate this state preemption of local obscenity ordinances, the bill would repeal Subsection 62 of Section 40-05-01 which presently provides that cities can enact ordinances prohibiting obscene performances or the dissemination of obscene materials.

The Committee recommends the bill embodying the prior civil determination procedure for two principal reasons. First, the procedure is recommended because the U.S. Supreme Court has indicated, in a recent opinion, that a prior civil determination procedure is the preferable way of handling the difficult question of determining what, in fact, is obscene. The second principal reason is that the prior civil determination of obscenity negates the possibility that persons engaged in disseminating materials would be subject to harassing criminal actions commenced by overzealous prosecutors at the insistence of persons whose standards of what is obscene are much higher than those of the community in general.

MISCELLANEOUS

The previous interim committee responsible for Criminal Code revision (the Committee on Judiciary "B") had recommended a separate bill to repeal Sections 12-07-07, 12-07-08, and 12-07-09 of the

Century Code which prohibit the carrying or display of red or black flags, and flags of other nations which are not "friendly", as well as flags of other states. The bill was introduced separately because those three sections were enacted as an initiated measure in 1920. The bill did not pass during the 1973 Session.

The Committee believes that these sections are unnecessary and that the new Criminal Code contains an adequate provision relating to desecration of a flag. However, the Committee recognizes that there may be other points of view on this question so it is submitting two alternative bills. The first bill would simply repeal those three sections. In order for that bill to be enacted, it would require a two-thirds affirmative vote in both Houses. The alternative bill would also propose repeal of those three sections, but would revise them for reenactment with new penalty classifications. The rationale for revising and reenacting as well as repealing is to allow the sections to be numbered in the context of the new Criminal Code, rather than being the only three sections remaining in Chapters 12-01 through 12-43 of the current Century Code. (Note: All of the remaining sections in those chapters are repealed by the new Criminal Code, effective July 1, 1975.)

The sections in the second alternative would prohibit the carrying of a flag, other than the flag of the United States, a state flag, or the flag of a friendly foreign nation, in parades. Such a flag could not be displayed or exhibited in a hall or public place, or on a vehicle, or in any other manner in public within the State. The second section would prohibit the carrying, display, or exhibition of red or black flags, or other banners, ensigns, or signs having inscriptions opposed or antagonistic to the existing government of the United States, or of the State of North Dakota, on such banner, ensign, or sign, where the use of display of that banner, ensign, or sign would tend to cause a breach of the public peace. Anyone who violates either of those two sections would be guilty of a Class B misdemeanor.

During the course of its studies, numerous aspects of its activities bothered the Committee, but because of the limitation on Committee time and the tremendous workload which it faced, the problems could not be resolved during this interim. However, the Committee did want the problems to be brought to the attention of the Legislature, so that they might be studied during the next interim.

The first and foremost problem called to the Committee's attention was in relation to the creation of criminal liability by administrative action. This occurs because numerous existing North Dakota statutes attach criminal liability to the violation of a regulation promulgated by a state, and in some cases a local, governmental entity. The Committee worried

about this liability, but simply did not have time to look at every regulation currently in force. The Committee did believe that an interim committee should take time to look at currently valid regulations to determine their necessity, and whether it is appropriate that criminal liability attach for violation of those regulations.

The second area of concern to the Committee was in relation to the disqualifications which followed a criminal conviction (in addition to the standard sentencing alternatives). The new Criminal Code contains a general statement regarding the rights lost or retained by a person convicted of a felony. However, the Committee was cognizant of the fact that disqualification provisions are contained throughout the Century Code, e.g., the fact that a particular officeholder will forfeit his office if he is convicted of a certain type of offense. The Committee believed that this topic should also be studied during the next interim.

A third area of concern had to do with the fact that numerous statutes throughout the Century Code do not differentiate, in speaking of contempt, between civil and criminal contempt. Nor are the existing statutes on civil and criminal contempt procedures free from ambiguity. Therefore, the Committee is recommending a study, during the next interim, of the subject of civil and criminal contempt.

The Committee is also recommending a study of the desirability of providing for appellate review of sentences. That is, a review of the length of, and justification for, a sentence, in addition to the

question of whether the sentence was legally permissible. Additionally, the Committee is recommending a study be made of the use of certain terminology, i.e., the use of the words "child", "children", "minor", and "minors" in Title 14 of the Century Code. When the Committee studied the criminal sections in that title, there was confusion as to the usage of those words in non-criminal sections of that title.

The Committee is recommending a study resolution embracing all of the foregoing topics. Additionally, the Committee is recommending another study resolution directing the Legislative Council to carry out a study of mental health and retardation commitment procedures, and the in-hospital procedures relating to the custody and treatment of persons hospitalized because of mental disability. This topic was of interest to the Committee, since persons who have suffered criminal convictions are often initially sentenced to a mental health facility for diagnosis or treatment, or are sent to such a facility following incarceration in a penal facility. The Committee was also aware that the constitutionality of current North Dakota statutes relating to mental health and retardation commitment procedures were subject to some doubt.

The resolution would direct the Council to study the statutes and case law relating to mental health and mental retardation commitment procedures, and to also study the procedures utilized in the treatment and detention of persons who are mentally ill or mentally retarded to ensure that the procedures meet the requirements of due process of law, and the needs of the persons and institutions involved.

JUDICIARY "B"

House Concurrent Resolution No. 3003 of the Forty-third Legislative Assembly directed the Legislative Council to continue to study and evaluate the Uniform Probate Code passed during the 1973 Legislative Session and to take effect on July 1, 1975. Senate Concurrent Resolution No. 4027 directed the Legislative Council to study the law enforcement and regulatory activities of the State with a view to the desirability and feasibility of creating a Department of Public Safety. Senate Concurrent Resolution No. 4077 directed the Legislative Council to carry out a comprehensive study of the State Penitentiary, the State Industrial School, the State Farm, and the facilities and programs at Jamestown State Hospital for incarceration, treatment, and diagnosis of persons convicted of criminal offenses.

These studies were assigned to the Committee on Judiciary "B" consisting of Senators S.F. Hoffner, Chairman, Francis Barth, Donald Holand, Harry Iszler, Emil Kautzmann, David Nething, Elton Ringsak, and Ernest Sands; and Representatives Aloha Eagles, William Kretschmar, Violetta LaGrave, Alice Olson, Dean Winkjer, and Terry Irving. Representative Irving was added to the Committee membership following her election at the Special Election held on December 4, 1973.

In addition to the studies assigned by the resolutions mentioned above, the Legislative Council assigned to the Committee on Judiciary "B" the responsibility for necessary statutory revision projects which might arise during the legislative interim, and the responsibility to study uniform and model legislation and make recommendations regarding such legislation. During the course of the interim, the Chairman of the Legislative Council, at the suggestion of the Resources Development Committee, assigned the Committee on Judiciary "B" the responsibility of studying law enforcement and judicial systems of those counties affected by such development. In carrying out its assignment, the Committee held 13 meetings, including one meeting in Jamestown, North Dakota, and spent a total of 24 working days studying the various topics assigned to it.

The report of the Committee on Judiciary "B" was submitted to the Legislative Council at the biennial meeting of the Council held at Bismarck. The report and recommended legislation were adopted for submission to the Forty-fourth Legislative Assembly by the Legislative Council in November 1974.

UNIFORM PROBATE CODE STUDY

Concurrent with the passage of House Bill No. 1040 (the Uniform Probate Code), the Forty-third Legislative Assembly passed House Concurrent Resolution No. 3003 which directed a continuing study of the Uniform Probate Code in order that any necessary changes could be made prior to its effective date — July 1, 1975.

At the initial meeting to consider potential problems with the Uniform Probate Code, it became evident that the major area of concern had to do with the provisions for bonding those persons who act as personal representatives responsible for the conservation and distribution of a particular decedent's estate. Additionally, some concern was expressed by representatives of the Veterans' Administration on the provisions of the Uniform Probate Code (hereinafter UPC) relating to guardianships. The Committee also heard testimony from County Judge Kirk Smith who had been active in studying the UPC for the State Bar Association. Judge Smith recommended that, to the greatest extent possible, the uniformity of the UPC be maintained.

In order to better understand the situation with regard to the bonding of personal representatives of decedents' estates, the Committee directed the staff to mail a questionnaire to all judges of county courts and county courts with increased jurisdiction. This was done early in the legislative interim, and the collated answers were presented to the Committee prior to further action with respect to the UPC. Forty-six of the 53 County Judges answering the questionnaire had indicated that, during the preceding five-year period reported, they had handled the probates of 11,628 estates. Of those estates, 6,102 (52.4 percent) involved decedents who died testate.

The questionnaire inquired as to how many executors or administrators were required to be bonded in each of the counties, and the answers ranged from 3.5 percent in three counties to 45.8 percent in one county. The largest group (19) of the counties answering, bonded executors or administrators in from 0 to 10.9 percent of the cases. Thirteen counties bonded executors or administrators in 11 to 20.9 percent of the cases. Nine counties bonded them in 21 to 30.1 percent of the cases, and four counties bonded executors or administrators in 31 to 40.9 percent of the cases. Of the probate bonds reported (1,746), 736 (42.7 percent) had a face value of \$5,000 or less, and 83 bonds (4.8 percent) had a face value exceeding \$60,000. The Surety Association of America's member companies

would probably charge a \$35 annual premium for a \$5,000 bond, and a \$300 annual premium for a \$60,000 bond.

House Bill No. 1040 presently provides, in Section 30.1-17-03, that a personal representative need not give a bond: unless he is appointed to administer an estate under a will, and the will contains an express requirement that he be bonded; unless a demand is made for a bond by a person interested in the estate, and the estate is in excess of \$1,000, or the person is a creditor having a claim in excess of \$1,000; or the court requires that the personal representative be bonded. These provisions are directly opposed to the provisions in current North Dakota probate law which would require a personal representative to be bonded unless all of the potential heirs waive that requirement.

In continuing to carry out its responsibility to study the UPC and determine what changes should be made, the Committee attended a seminar conducted by Professor Richard Wellman and Professor Richard Effland, two of the principal draftsmen of the UPC for the National Conference of Commissioners on Uniform State Laws. These gentlemen summarized the arguments in favor of retaining the personal representative bonding provisions of the UPC as passed by the Forty-third Legislative Assembly.

The argument of the two professors was essentially that the premiums for probate bonds are too expensive in relation to the direct losses and claims adjustments which occur in North Dakota. Additionally, the argument was advanced that the UPC is designed to make the probate of an estate as simple and expeditious as possible, and requiring heirs to waive bond, as is presently done in a great majority of cases under present North Dakota probate law, would be simply placing an impediment in the way of speeding the probate of a decedent's estate.

The Committee heard testimony from those interested in amending Section 30.1-17-03 so that it would read essentially as current law does. Their arguments were based primarily on the fact that heirs must be protected, not only from dishonest personal representatives, but also from well-meaning personal representatives who make errors in judgment.

At its final meeting wherein the UPC was considered, the Committee heard testimony from representatives of the Tax Department, expressing some concern with the procedures which House Bill No. 1040 would have required in collecting the estate tax. The Tax Department recommended that the estate tax be collected at the state level, rather than at the county level, and that county judges report

the appointment of personal representatives to the Tax Department.

The Committee also heard a report on a telephone conversation between the Committee Counsel and County Judge Kirk Smith. Judge Smith stated, during that conversation, that, at a recent meeting of county judges, he visited personally with 37 judges concerning their experience with relation to probate bonds. Of the 37 judges interviewed, 34 had no recollection of any losses in their counties which would be covered by a "probate bond"; two judges had had losses covered by probate bonds, the claims were paid, and the losses were recovered by the surety company; and one judge, Judge Smith himself, presently had a claim pending under a probate bond.

The Committee is recommending a bill to amend several sections of the UPC before it goes into effect, and to amend certain sections of the Century Code having to do with the estate tax. The most important of the amendments being recommended:

1. Would require county judges to forward to the Tax Department copies of all orders appointing personal representatives of decedents' estates, and orders directing payment of an elective share to the decedent's spouse;
2. Would limit the fee which could be paid to a conservator for managing the estate of a person who is receiving benefits from the Veterans' Administration to not more than \$50 per year; and
3. Would require the Tax Commissioner to collect the estate tax, rather than the County Treasurer as is presently the case.

The bill recommended by the Committee would not amend the UPC provisions (Section 30.1-17-03) to require personal representatives to be bonded unless the requirement of bond is waived by all of the heirs, or unless the decedent's will specifically waives bond. Thus, the provisions relating to bonding of personal representatives as contained in the National Conference of Commissioners on Uniform State Laws draft of the UPC would be retained.

PENAL INSTITUTIONS STUDY

In order to adequately carry out its assignment under Senate Concurrent Resolution No. 4077, the Committee determined early in the interim that it would have to visit each of the penal institutions and the State Hospital with respect to the facilities there for persons convicted of crimes. The Committee toured the State Penitentiary in September 1973,

and held interviews with members of the Penitentiary staff and selected inmates.

The interviews with the seven inmates resulted in the following statements by one or more inmates:

1. A belief that drugs could be smuggled into the Penitentiary;
2. A suggestion that inmates have access to legal counsel;
3. A belief that recreational facilities at the Penitentiary are inadequate;
4. A belief that the handling of inmates financial affairs was inadequate, and, in some instances, unfair;
5. A desire that there be a representative on the Parole Board from the Penitentiary staff, which representative would be more familiar with the prisoners;
6. A suggestion that inmates be eligible for work release programs even though their minimum sentences have not been served; and
7. A suggestion that prison security could be improved.

In addition to testimony from inmates, the Committee heard testimony concerning the status of the prison in general. It was noted that, based on an average of 125 inmates, the average cost per day at the State Penitentiary was \$17.29 per inmate. Based on an average of 25 inmates, the average cost of the State Farm was \$6.57 per inmate. The overall average cost per day at both the Penitentiary and State Farm was \$15.51, as of September 13, 1973. As of that same date, there were 101 personnel on the staff of the Penitentiary.

The Committee also received a profile of the inmates at the Penitentiary as of August 1973. A copy of that profile is on file in the Legislative Council staff offices. Of the 144 inmates incarcerated at that time, the profile indicated that 35 percent of the population was under 23 years of age, and that over 50 percent was under 28 years of age. Of that same population, 37 percent admitted to excessive use of alcohol, and 30 percent of the population admitted to drug use.

The Committee toured the State Industrial School in February 1974, and again interviewed members of the staff and students. At the time of the Committee's visit, there were 63 full-time and five part-time employees on the School staff, and 78 students under the jurisdiction of the School, including students living in the three half-way houses in Bismarck, Fargo, and Wahpeton. Twenty-one of the total number of students were female.

Interviews with the staff indicated some unhappiness with the fact that the teachers at the School were under the Teachers' Fund for Retirement. They felt that they should be able to be under the Public Employees' Retirement System since they were state employees. Additionally, it was noted during discussion with the staff that some staff members, due to the inadequacy of their salaries, had been eligible for food stamps during the previous calendar year. Staff members also indicated that it was difficult to enforce the state law prohibiting minors from possessing or smoking cigarettes, and that the students quite often smoked "butts", which was deleterious to their health.

At the time of the Committee's visit, the Superintendent of the School, Mr. Reis Hall, was just taking office, and many of the comments by the staff were tempered by a desire to see how Mr. Hall would handle the situation at the School.

The Committee then had an open discussion with seven students, with no School staff personnel present, and the following comments, among others, were received:

1. A statement that some of the students had been physically maltreated, especially following attempts to run away;
2. A belief that the educational program at the School was superior to the educational programs at public schools in their home cities;
3. A belief that there were no appropriate channels for students to air their complaints, without being discriminated against for doing so;
4. A belief that their mail was censored, and that they were limited in the numbers and types of persons to whom they could write; and
5. A statement that more recreational equipment was needed, and more free time for recreation should be made available.

The Committee met in Jamestown in October 1973, and toured the Special Treatment Ward (formerly known as the Maximum Security Ward) of the State Hospital, as well as the "Drug Unit" and the "Alcoholism Unit". It was noted that the average patient load in the Special Treatment Ward has 18 patients, and that the facility was inadequate, both physically and therapeutically. The Committee heard testimony indicating that the Hospital's accreditation might be risked if something is not done about the Special Treatment Ward.

The maximum cost per inmate per day in the Special Treatment Ward was \$30. In order to construct a new Maximum Security Unit which would be adequate, the Superintendent, Dr. Hubert Carbone, estimated that \$1 million would be needed. That is, approximately \$40,000 per bed for a 20-bed unit, plus extras and furnishings. The Superintendent stated that it wasn't really important whether the facility be built at the State Hospital or at the State Penitentiary, since the adequacy of the facilities and of the services rendered there is ultimately going to be determined by the staffing of the facility. He noted that it would probably be somewhat easier to staff such a facility if it were located near the State Hospital.

During the tour of the Alcoholism and Drug Division units, it was noted that the per-patient per-day cost in that division was \$28. The Committee also heard testimony concerning placement of treated alcoholics, including testimony that they were sometimes placed in the care of a member of Alcoholics Anonymous who happened to live in the patient's home area. Where no Alcoholics Anonymous member was available to receive the referral, the patient would be referred to the usual governmental agencies.

The Committee heard testimony concerning the drug program, and the fact that there were very few hard narcotics addicts in the State, but quite a number of "drug abusers". The Youth Unit of the Hospital was categorized as a "soft drug treatment center", and the population in that Unit was limited to persons from 15 to 25 years old. Use of drugs in that Unit is controlled, the Committee was told, primarily through peer pressure, and secondarily through control of visitors. The amount of controlled substances which get into the Youth Unit was thought to be minimal by those testifying.

The question of the billing of patients for services and care rendered at the State Hospital was discussed, and the Superintendent noted that there should be some fee charged to patients in order that the Hospital not become a dumping ground for unwanted individuals. He thought that the charging of fees results in some assurance that the persons who are hospitalized are actually in need of treatment.

The Committee heard testimony concerning the desirability of having a "IN-WATS" line available so that former patients could call back to the Hospital if they felt the need of further consultation with doctors or counselors at the Hospital. Additionally, some members of the Hospital staff felt that some consideration should be given to providing a program for persons convicted of DWI, which program was based on the optional use of "An-

tabuse", a drug designed to help people control their desire for alcoholic beverages.

Other programs aimed at preventing the use of alcohol should also be considered, as well as "community action" programs on prevention of drug abuse. It was also suggested that more funding be made available to the Hospital, on a continuing basis, to allow more research into the existing data available at the Hospital. It was noted that there was a great mass of data available, but that no one on the present staff had the time, or the expertise, to collate it and to extract pertinent findings. Such a person could be hired if additional funding were available.

The Committee also heard a proposal from a member of the staff that a "biofeedback therapy, training, and research center" be located at the Hospital. Essentially, biofeedback involves the teaching of human beings to develop voluntary control over many physiological processes previously thought of as autonomous. An example of the use of biofeedback would be the ability for self-cure of a tension headache through conscious control of the muscles causing the headache. Another example is the possibility of "curing" so-called migraine headaches by consciously directing the flow of blood away from the brain and into some other part of the body, such as the hands.

During further consideration of this portion of its study responsibilities, the Committee heard testimony from members of the staff of the Penitentiary and of the State Industrial School concerning other improvements which they would like to see made. For instance, the Penitentiary staff suggested that a Prison Industries Fund be created which would allow the Penitentiary administration to have more flexibility in determining which industries should be carried on at the Penitentiary, and would also allow the administration to pay inmates who work in those industries on a competitive basis, thus utilizing the industries as a truly rehabilitative tool. The Committee also heard recommendations from the Superintendent of the State Industrial School that the time during which students could be kept in custody at the School be increased so as to provide more sentencing options to the Juvenile Courts.

The Committee also heard from members of the staff of the Director of Institutions' office who presented several proposed amendments for the Committee's consideration, most of which were adopted and will be discussed later in this report.

During consideration of the desirability of creating a Prison Industries Fund, the Committee considered the desirability of moving the license plate-making operation from the Penitentiary to

some other location. Representatives of the Minot Sheltered Workshop testified as to their desire to have the license plate-making operation located there, and a representative of North Dakota's handicapped persons stated that the making of license plates should be placed in the hands of an organization of handicapped persons such as those employed in the Minot Sheltered Workshop.

The Committee decided that the final determination as to who would be responsible for manufacturing motor vehicle license plates was up to the Motor Vehicle Registrar and the Director of Institutions. Should the Prison Industries Fund bill pass, and the Penitentiary administration determine that the license plate-making operation should no longer be located there, the Motor Vehicle Registrar and the Director of Institutions could make whatever arrangements, including placing the manufacturing process with the Minot Sheltered Workshop, as they saw fit.

At one point in the study, the Committee considered reports that there had been a homosexual assault at the Penitentiary. The warden investigated the matter, and reported that since he assumed his office (on January 15, 1973), he had received no report of a sexual assault upon an inmate. Additionally, a concerted inquiry amongst the Corrections Officers, and selected inmates, failed to indicate that any such attack had taken place.

The Committee is recommending eight bills as the result of its study of the penal institutions. Three of the bills deal with the Penitentiary, three deal with the Industrial School, one deals with all penal institutions, and one deals with the scope of jurisdiction of the Juvenile Court.

The three bills dealing with the Penitentiary would create a "Prison Industries Fund"; would extend the eligibility of Penitentiary inmates to participate in education and work release programs; and would change the methods of accounting for inmate funds. The "Prison Industries Fund" bill would provide that the Director of Institutions and the warden of the Penitentiary are to employ inmates of the Penitentiary and the State Farm in carrying on the work of the industries established at those institutions. The warden, with the approval of the director, may establish and engage in new prison industries and discontinue existing prison industries.

A special fund would then be created in the state treasury known as the Prison Industries Fund. It would be administered by the warden, and would consist of all moneys received or produced by a prison industry, from grants, gifts, or bequests, plus all moneys received as a result of legislative appropriation to the fund and all interest earned by

moneys in the fund. The moneys in the fund may be expended by the warden to operate the industries, and to pay compensation to inmates and Penitentiary employees engaged in supervising the inmates in the prison industries. No expenditures could be made except in accordance with legislative appropriations. The bill would delete present statutory references to specify prison industries, such as the "twine plant", and would also delete the statutory authority to allow inmates to do work at other state institutions, or on the public highways.

Products manufactured by prison industries could only be sold to other governmental entities or to nonprofit organizations. The inmate is not precluded from selling articles made by him to visitors to the Penitentiary.

Inmates engaged in the prison industries are to receive compensation in amounts determined by the Director of Institutions, and if they are not directly "employed" in a prison industry, their compensation is not to exceed \$1.20 per day. The compensation of prisoners working in the prison industries can be set by the Director of Institutions at a reasonable amount, within the limits of legislative appropriations.

During the course of testimony on this bill, the Committee heard from a representative of the AFL-CIO. He desired to ensure that the prison industries do not cause loss of private employment, and that whatever is done should have a rehabilitative effect, and not result in "slave labor". He stated that he liked the "profit sharing" idea proposed by the Penitentiary administration, and suggested that consideration be given to involving an advisory group of industrial employees and manager to advise the prison industries supervisors. He favored a minimum wage for inmates involved in prison industries, but realized that it was probably impractical.

The second bill dealing with the Penitentiary would provide that Penitentiary inmates would be eligible for work and education release programs even though they have not completed a minimum sentence which was imposed prior to July 1, 1975. (Note: After July 1, 1975, courts will no longer sentence criminal defendants to minimum sentences as a result of the passage of the new Criminal Code in 1973, and as a result of proposals from the Committee on Judiciary "A".)

Presently, an inmate's application to participate in a work or education release program must be forwarded by the warden to the Parole Board, and the board has the sole power to approve, disapprove, or defer action on an application. Following Parole Board action approving an application, the approval may be revoked by either the warden or the Parole

Board. The bill would change this procedure so that the warden can first approve or disapprove an application before he forwards it to the Parole Board. If he disapproves the application, it is forwarded to the board for its information only. If he approves an application, the Parole Board may thereafter either approve, disapprove, or defer action on it.

(The bill also amends Section 12-48.1-02 to authorize the Parole Board, and the warden, to conform their policies on work release with Presidential Executive Order No. 11755. This will allow inmates to work on federally funded projects under work release programs.)

Additionally, the bill provides that short leaves, not to exceed 72 hours, may be granted by the Parole Board, upon recommendation by the warden, to those inmates who have been on work or education release programs for at least 30 days.

The third bill relating to the Penitentiary consists of sections recommended for amendment by the Director of Institutions' office. The sections have primarily to do with the disposition of moneys earned by inmates, the provision for inmates upon discharge, and provision for someone to act as warden in the absence of the warden and his deputy wardens.

All of the current sections setting forth how inmates' funds are to be handled are recommended for repeal by the bill draft, with the exception of Section 12-48-15 which is amended to provide that each inmate is to have an account at the Penitentiary, and 50 percent of that inmate's earnings are to accumulate in that account until he has \$100 therein. That \$100 is not to be available to the inmate until his release. The remainder of his earnings are available to the inmate under the supervision and control of the warden. When an inmate is released all moneys in his account are to be paid to him in full.

Any moneys unclaimed within one year after the inmate has been released are to be placed in the general fund. Currently, such moneys are placed in the inmates' "general benefit fund".

When inmates are discharged, they are to receive appropriate clothing and transportation to some point within the State if it is determined appropriate by the warden. His determination will be based upon the need of the inmate.

The bill amends the section which prohibits the warden and his deputy wardens to all be absent from the Penitentiary unless they have the permission of the Director of Institutions. Additionally, that section is amended to provide that the warden must designate, in writing, one of his staff members to act as warden in situations where both he (the warden)

and his deputy wardens will be absent. The warden must also inform the Director of Institutions, in writing, of his choice of acting warden.

Finally, the bill repeals two sections of law dealing with the expense of transferring inmates to and from the State Hospital, and allocating the cost of transportation and care of persons committed to the State Farm. With respect to transportation of inmates to the State Hospital, the Director of Institutions noted that the procedure, which involved the Office of the Budget in approving transfer expenses, and authorized payment directly out of the State Treasury, may have had merit when local sheriffs were called upon to make the transfer. However, such transfers are presently made utilizing Penitentiary vehicles, and the cost thereof is included in the Penitentiary's budget.

The other section repealed relates to the collection of costs upon commitment to the State Farm where the commitment was for a misdemeanor. This section was recommended for repeal by the Director of Institutions' office because it is difficult to determine which county is or is not to make payment under the current statute, and only rarely are collections made by the Penitentiary. The initial fear which gave rise to the statute in the first place, i.e., that counties would send a large number of their misdemeanor convicts to the State Farm, has not materialized, and the Director believes that it will not become a problem in the future.

In response to testimony from the Superintendent of the State Industrial School, and to suggestions from a Juvenile Court Judge, the Committee recommends a bill which authorizes a Criminal Court (i.e., a District Court or County Court with Increased Jurisdiction) to send a young person convicted of a crime to the Industrial School for a two-year period even though that would extend the period of commitment beyond that youth's 18th birthday.

The remainder of the bill deals essentially with the chapter on paroles from the State Industrial School. The chapter is amended to delete reference to the word "parole" and substitute the words "aftercare program" therefor. The Director of Institutions is given authority to provide an aftercare program for persons committed to the School, and may establish facilities in which SIS students may receive such aftercare. The students would be allowed access to an aftercare program on recommendation of the Superintendent to the Director of Institutions. There must be a suitable person willing to receive custody of the student to be placed in the aftercare program.

A student who violates the rules of an aftercare program is to be returned to the School. The Director

of Institutions can issue an order requiring any peace officer to apprehend and return students who violate the aftercare program rules to the Industrial School. Additionally, the section of law which presently gives the Director of Institutions authority to discharge any student from the Industrial School upon satisfactory evidence of reformation, and as a reward for good conduct, will remain on the books.

A section in Chapter 12-52 which provides that for a student to violate the terms of his parole is a misdemeanor is repealed, as is a section which states that all children committed to the Industrial School are to be deemed minors until they reach 18 years of age. The latter section is redundant since all persons are minors until they reach 18 years of age, regardless of their sex or marital status.

The next bill being recommended by the Committee resulted from testimony by representatives from both the Industrial School and the Director of Institutions' office. The testimony related to the difficulty of enforcing the current statutes which prohibit the use of tobacco by minors in public places (see Sections 12-43-04 and 12-43-05). Because these statutes could not be effectively enforced, they have a tendency to breed further disrespect of the law on the part of Industrial School students.

A majority of the Committee sympathized with the desire on the part of the Director of Institutions and the Superintendent to have something done with respect to the statutes prohibiting the sale of tobacco to minors, and use of tobacco by minors. The Committee was aware that the current law on that subject would be repealed when the new Criminal Code took effect on July 1, 1975, and that a new law was enacted during the 1973 Session. The new law would make use of tobacco by minors in any place, public or private, a misdemeanor, as well as make it a misdemeanor for any person to furnish or sell tobacco to minors. That statute, passed during the last Session, was codified as Section 12.1-31-03. The Committee is recommending a bill to repeal that section.

A majority of the Committee believes that control of juvenile smoking is not a function of the criminal law, but is a parental responsibility. Statutes such as the current ones prohibiting the use of tobacco by minors, and Section 12.1-31-03, are usually discriminatorily enforced, thus tending to breed disrespect for the law on the part of those against whom the statutes are enforced, and on the part of those who see the discriminatory enforcement taking place.

The last bill draft which deals solely with the Industrial School resulted from recommendations for revision made by the Director of Institutions' office.

The bill would delete the present provisions establishing a "disciplinary committee" at the Industrial School, and authorize the Superintendent of the School to appoint a new "disciplinary committee". The membership of the committee would include cottage supervisors, professional staff, and others, including students and members of the general public. The committee would be empowered to hear all charges of serious breaches of discipline and to recommend disciplinary action.

If a child has been placed under "close supervision" by the Superintendent following a serious breach of discipline, the committee is to hear that child's case within 48 hours. Thereafter the committee is to make recommendations to the Superintendent as to what further action, if any, is to be taken.

The bill will also provide that students at the Industrial School, or its auxiliary facilities such as "half-way houses", may receive stipends in amounts determined by the Superintendent, and approved by the Director of Institutions, so long as such stipends are within the limits of legislative appropriations. When the Committee heard testimony relating to this provision, it was noted that the stipends would not necessarily have to be paid solely for work performed at the institution, but could be paid for other reasons, and utilized as a rehabilitative tool.

The next bill recommended by the Committee affects all of the penal institutions, as well as the county jails. The bill was initially drafted at the request of Senator Nething, a Committee member, as a reaction to testimony heard during the Penitentiary tour to the effect that controlled substances and alcoholic beverages could be smuggled into the Penitentiary. Senator Nething presented a first draft of the bill to the Committee, and the Committee requested that it be put on a future agenda as a Committee bill.

The bill was circulated to various interested parties, their comments were received, and the bill was redrafted and accepted by the Committee. Essentially, the bill provides higher penalties for the delivery to, and receipt by, inmates of controlled substances than are provided by the general prohibitory statutes in Chapter 19-03.1 of the Century Code (Uniform Controlled Substances Act). The bill covers inmates of the Penitentiary, the State Farm, that portion of the State Hospital housing persons convicted of crimes, and county jails. It also covers students at the State Industrial School.

A person who delivers a controlled substance to a student at the SIS is guilty of a Class B felony (maximum of 10 years imprisonment, unless an extended sentence is imposed). If he delivers an alcoholic beverage, he is guilty of a Class A

misdemeanor. A student who receives a controlled substance is also guilty of a Class B felony, and is guilty of a Class A misdemeanor if he receives alcoholic beverages. If the student is above 15 years of age, and is charged, under this bill, with receiving a controlled substance, the District Court is directed to waive juvenile jurisdiction.

The next section of the bill would prohibit the delivery of controlled substances or alcoholic beverages to inmates at the State Farm, and it would also prohibit such inmates from possessing controlled substances or alcoholic beverages. Delivery or possession of a controlled substance would be a class B felony, and delivery or possession of alcoholic beverages would be a class A misdemeanor.

The bill would also make it an offense for anyone to deliver controlled substances or alcoholic beverages to prisoners in a jail. Any person delivering or possessing controlled substances would be guilty of a class B felony, and delivery or possession of alcoholic beverages would be a class A misdemeanor.

Identical offense classifications apply to the delivery of controlled substances and alcoholic beverages to Penitentiary inmates, and possession of either by those inmates. However, a Penitentiary inmate who is caught in possession of controlled substances is to receive a consecutive sentence to any sentence which he is currently serving. The word "Penitentiary" is defined in the bill to include those portions of the physical structures of the State Hospital which are used to house prisoners, and the word "inmate" is defined to include a person incarcerated in the State Hospital. The bill provides that an inmate who is at large under a work or education release plan who possesses or delivers an alcoholic beverage or a controlled substance to another inmate is guilty of the same offense as a person at large who delivers such substances or beverages to inmates, or as is another inmate in possession of such substances or beverages.

Another section of the bill would make it a class A misdemeanor for any person to take any alcoholic beverage or controlled substance into any charitable institution in this State, except upon the express authority of the chief executive officer, or physician employed by that institution. This is an amendment of that section of law which previously prohibited that type of activity with respect to both **penal** and charitable institutions.

Finally, the bill would amend the general Controlled Substances Act offense definitions to exclude from their coverage the particular offenses defined in this bill, i.e., delivery to inmates or possession by inmates of controlled substances.

The final bill being recommended by the Committee results from the request by the Superintendent of the Industrial School to extend the jurisdiction of Juvenile Courts beyond the juvenile's 18th birthday. The Committee was apprised of the fact that the Judicial Council had considered a bill draft to extend the jurisdiction of the Juvenile Court to encompass 20-year-old persons in instances where they had committed a delinquent act while under age 18.

In order to complement the bill authorizing an extension of the commitment to the Industrial School (see above), the Committee is also recommending a bill to amend certain sections in the Uniform Juvenile Court Act. In addition to extension of the Juvenile Court's jurisdiction, the bill also covers the question of waiver of juvenile jurisdiction, and deals with the method to be used in determining the appropriate judicial arrangements to be made in the case of very young children who have been removed from the care, custody, and control of their parents or guardians.

Essentially, the bill would amend the definition of child to include individuals who are under age 18 and are not cohabiting with a spouse, nor in the military service of the United States. The definition would, however, be extended to persons under age 20 where those persons had committed a delinquent act prior to turning 18. In that case, the Juvenile Court could maintain jurisdiction, with or without sending the youth to the Industrial School, until the youth is 20 years old.

The bill would amend Section 27-20-34 which presently provides that, in cases where the "delinquent act" was a crime under state law, the Court can transfer the offense for prosecution to the regular "adult" criminal courts. Presently, this transfer can be made: if the Court determines that the child is over 16 years old at the time the offense was committed; a hearing is held on the question of whether the transfer should be made; and the Court finds reasonable grounds to believe that the child committed the alleged delinquent act, is not amenable to treatment as a juvenile at available facilities, should not be committed to an institution for the mentally retarded or mentally ill, and the interests of the community require that the child be placed under legal restraint or discipline. The bill recommended by the Committee would amend that section to also provide that the Court may transfer the offense for criminal prosecution if the child involved is over 17 years of age and makes a request for the transfer.

The bill also creates a new subsection to Section 27-20-36 which directs the Juvenile Court, prior to extending the duration of an order removing a child under 10 years of age from the care, custody, and

control of its parent or guardian, to determine, at the extension hearing, whether the child is adoptable, or whether termination of parental rights is in the child's best interest. If, at the hearing, the Court determines that the child is adoptable, and that termination of parental rights and the parent child relationship is warranted and would be in the best interests of the child, the Court is to make a further order of disposition terminating parental rights and committing the child to a child-placing agency, or to the custody of the Executive Director of the Social Services Board.

The Committee, during the course of its penal institutions study, heard testimony concerning the desirability of continuing the Group Opportunity Program at the Wahpeton State School of Science. The program was developed about two years ago to provide parolees and probationers with a two-year vocational education in trade and technical areas in order that they might become productive members of society. Actual enrollment in the program commenced in the fall of 1973 with 10 students enrolled, and 25 students have been processed to date.

The students actually live in the dormitories, and are otherwise fully integrated into the general student body. The program presently receives funding through the Law Enforcement Council and from the Vocational Rehabilitation Division of the Social Services Department. Testimony indicated that the Combined Law Enforcement Council would probably not be funding the program again during the next biennium. Nor does the Chief Parole Officer desire to have the funding for the program in his budget.

The projected program costs for the 1975-77 biennium are \$78,155, plus \$25,320 to pay for tuition, books, and supplies, which the Division of Vocational Rehabilitation provided, or will provide during the current biennium. Thus, the total projected program cost is \$103,475. The Committee believed that the program was worthwhile, and should be continued during the next biennium. The Committee passed the following motion:

"IT WAS MOVED BY REPRESENTATIVE EAGLES, SECONDED BY REPRESENTATIVE LAGRAVE AND SENATOR BARTH, AND UNANIMOUSLY CARRIED that the Committee on Judiciary "B" express its support of the program for parolees and probationers, known as the Group Opportunity Program, being carried at the North Dakota State School of Science at Wahpeton; that the Committee also fully supports the budget for that program for the biennium commencing July 1, 1975, in the amount of \$103,475.00;

and recommends that the foregoing amount be included, as a separate line item, in the budget of the North Dakota State School of Science."

It is the intent of the Committee that this amount be reduced by any funding for the program which might become available during the biennium from the Vocational Rehabilitation Division.

DEPARTMENT OF PUBLIC SAFETY STUDY

Senate Concurrent Resolution No. 4027 directed the Legislative Council to study the feasibility and desirability of creating a Department of Public Safety in the Executive Branch, and to otherwise study the delivery of state-level law enforcement services. During the course of early deliberations on the methods to be used in carrying out the study, it was noted that the Committee should have a great deal of input from local law enforcement officers. Therefore, at the next meeting at which the topic was to be aired, a delegation (six) of sheriffs and police officers from the North Dakota Peace Officers Association was invited to attend, and their expenses were paid (for that meeting only).

The peace officers attending that meeting were notified in each case when any Committee meeting held thereafter would involve topics in which they had an interest, and their attendance at those meetings was quite regular and very helpful to the Committee. Additionally, the Committee invited all members of the Combined Law Enforcement Council to attend the first meeting at which the Department of Public Safety study was given serious consideration. At that meeting, it was suggested that the Committee contract with a professional consulting firm to carry out the study and to make recommendations concerning the desirability of creating a Department of Public Safety in the Executive Branch.

At that same meeting, the Attorney General recommended that the Committee consider creation of a "Foundation Aid Program" for law enforcement, noting the need to assist local law enforcement agencies, especially in jurisdictions with low populations. The Committee's response to this suggestion by the Attorney General will be covered in depth in the next section of this report dealing with the Committee's energy development impact recommendations.

Following this meeting, the Committee directed the staff to seek a grant from the Combined Law Enforcement Council to fund the study, as well as to fund additional Committee effort in the area of energy development impact on local law enforcement agencies. The staff was successful in getting a \$45,000 grant, \$24,000 of which was dedicated to the

payment of a consulting firm for carrying out the "Public Safety" study.

The staff submitted a "request for proposal" to 14 "consultants", including the University of North Dakota. The request for proposal contained no indication of the amount of money available to pay for the study, thus allowing each consultant to give their best estimate of the costs involved in a good study.

Ten firms responded to the request for proposal. They were: Arthur Andersen & Co.; Arthur Young & Co.; Booz, Allen & Hamilton; Ernst & Ernst; International Association of Chiefs of Police; Midwest Research Institute; Peat, Marwick, Mitchell & Co.; Public Administration Services; PRC — Public Management Services, Inc.; and Touche Ross & Co.

The Committee assigned a subcommittee of five members to interview representatives of three firms which were selected from among the 10 submitting proposals. Those firms were Booz, Allen & Hamilton; Public Administration Services; and PRC — Public Management Services, Inc. The Committee met and selected the consulting firm of Booz, Allen & Hamilton to carry out the study, and contracted with that firm in an amount not to exceed \$25,000. The Committee decision to select a consulting firm headquartered outside of North Dakota was not unanimous.

During the course of the consultant selection process, the Governor appeared before the Committee and endorsed the concept of a Department of Public Safety. In addition, the Governor sought Committee support for the appointment of a Public Safety Coordinator on his staff who would be responsible for initially coordinating the operations of those public safety-related agencies over which the Governor has ultimate authority. The Governor noted that funding for the position had been sought from the Combined Law Enforcement Council, and that the Council had approved such a grant. Therefore, when the Emergency Commission approved expenditure of the grant funds, the Coordinator would be hired. The Committee, by motion, did extend cooperation to the Coordinator and made him an *ad hoc* member of the Committee.

After some delay, the Emergency Commission approved expenditure of the grant, and Mr. Robert Holte was appointed Public Safety Coordinator. Mr. Holte attended all meetings of the Committee at which the Committee discussed law enforcement-related matters, and his assistance to the Committee was very valuable.

The consultant made an interim report to the Committee, and was given direction for additional items to be contained in the final report. The first

volume of the consultant's two-volume report was presented to the Committee in August 1974. That was the most important volume in that it contained the consultant's recommendations. The full consultant's report is on file in the Legislative Council staff offices.

In carrying out the study, the consultant made field visitations to selected sheriffs' offices and police offices. In addition, the consultant circulated a questionnaire to all police and sheriffs' departments in the State. Thirty-eight percent of the local law enforcement agencies contacted returned the questionnaire, including more than half of the county sheriffs. The field visitations were made to the following persons: Sheriff Don Hewson, Adams County; Chief Edwin Anderson, Fargo Police Department; Chief Jerry Barnhart, Dickinson Police Department; Sheriff Ivan Stiefel, Mercer County; Sheriff Gordon Albers, Oliver County; Sheriff Glen Wells, Pembina County; Sheriff Earl Dosch, Richland County; Chief Walter White, Rolla Police Department; Sheriff Olaf Haaland and Chief Deputy Sheriff Ed Heilmann, Ward County; and Assistant Chief S. Molinari, Williston Police Department.

A summary of the findings and results of the survey of local agencies was that, overall, the sheriffs were generally satisfied with current state-level public safety services, and could identify only modest opportunities for improvement. The larger sheriffs' departments make more frequent use of the state-level services, and appear to be more critical of available services, while the smaller departments rate the services higher. Most sheriffs were interested in having the Legislature address law enforcement problems which were essentially unrelated to the question of how state-level public safety services should be departmentally organized.

For instance, the small sheriffs' departments stated that they would like to see the Highway Patrol field staffing increased to provide better patrol coverages on roads in their areas. Sheriffs' departments of all sizes were interested in having the State assume a role in the establishment and continuation of contract policing programs at the county level. (Note: The next section of this report will discuss the Committee's response to that problem in greater detail.) Both small and large sheriffs' offices indicated that the State should take the lead in making sure that local law enforcement officers' salaries are at an adequate level to ensure the attraction and retention of qualified personnel. The respondents, for the most part, supported the concept of the Legislature establishing minimum standards for law enforcement salaries, based on community size and other relevant factors.

The sheriffs surveyed indicated no great concern that public safety activities at the state-level be

reorganized. They stated that their major concern was with increased manpower at the local level.

The police departments surveyed gave responses essentially similar to those given by the sheriffs. They assigned high priority to upgrading certain state-level public safety services, but showed little support for consolidation of state-level agencies. The consultant found it interesting to note that many small police departments placed a high priority on state financial support for contract policing programs.

Small police departments also desired expansion of Highway Patrol field staffing, and noted the need to upgrade the hardware aspects of the State Radio System (Note: That topic was covered by the interim Committee on State and Federal Government.). Larger police agencies assigned top priority to upgrading the information services available to support their operations through providing more rapid access to law enforcement information, establishing a statewide "wants and warrants" information base, and providing more comprehensive individual criminal history information.

The consultant also visited all of the state-level agencies which could be considered as having a public safety-related function. Following these visitations and studies, the consultant made his recommendations as follows:

1. That a single Department of Public Safety not be created in the Executive Branch;
2. That the position of Public Safety Coordinator on the Governor's staff be continued;
3. That the field operation activities of the Truck Regulatory Division in the Highway Department be merged with the Highway Patrol;
4. That a Motor Vehicle Division be created in the Highway Department; and
5. That a comprehensive analysis and study of statewide criminal justice information needs be made, and that an upgrading of the present "system's" capabilities be made based on the results of that study.

The Committee took action with respect to supporting the continuation of the office of Public Safety Coordinator on the Governor's staff. The Committee believed that no particular legislation was needed to continue that position, but that it was primarily a matter of funding the position. Additionally, the Committee believed that the Coordinator would have more flexibility to take appropriate action if he was not bound by specific legislative grants of power.

Therefore, the Committee, by motion, passed the following policy statement:

"The constitutional responsibility for the coordination of the bulk of the Public Safety agencies within the State of North Dakota rests with the Executive Branch (Governor). The office of the Governor should be free and flexible to appoint staff in his office to carry the state portfolio of Public Safety Coordinator."

Adoption of that policy statement was not unanimous, as there was some minority sentiment that the Committee should have gone further in support of the Public Safety Coordinator's position. However, the majority of the Committee felt that this statement was adequate as it would allow the Governor sufficient flexibility to change his staffing pattern should the need arise.

The Committee requested the Council staff to draft two bills based on the recommendations of the consultant. One bill would create a Motor Vehicle Division in the Highway Department consisting of the present Motor Vehicle Department, the Drivers' Licensing Division, and the Truck Regulatory Division. The second bill would merge the field enforcement functions of the Truck Regulatory Division into the Highway Patrol.

The Committee heard much testimony on the Highway Patrol — Truck Regulatory Division merger bill from members of the trucking industry, as well as from law enforcement officers. Most of the testimony was not favorable to the merger, even though there was a potential saving of some moneys due to preventing overlap of district supervisors, which saving the consultant proposed to utilize in paying the salaries of additional Highway Patrolmen.

The Committee considered the bill draft to merge the field enforcement functions of the Truck Regulatory Division with the Highway Patrol, but did not approve it. The bill draft to create a Motor Vehicle Division in the Highway Department was approved. The consultant, in making this recommendation, had indicated that the savings in top management positions resulting from the consolidation could approximate \$27,000 per annum.

The bill would establish a Motor Vehicle Division under the jurisdiction and control of the Highway Commissioner, and would give the division responsibility for driver licensing, motor vehicle registration, the issuance of special permits authorizing the operation of motor vehicles, including trucks, in certain cases, and the enforcement of truck regulatory statutes. The Director of the Division is to be appointed by, and serve at the pleasure of, the Highway Commissioner. His salary

is to be set by the Commissioner within the limits of legislative appropriation, and he is to be bonded at \$40,000.

The bill would change the fees charged for information concerning vehicle registration and vehicle licensing records from "not to exceed \$1" to a "reasonable fee" established by the Director. The bill would not change the statutes which deal with the question of the availability of records in the Drivers' Licensing Division (formerly the Safety Responsibility Division).

ENERGY DEVELOPMENT IMPACT ON LAW ENFORCEMENT

During the course of the interim, the Committee received a study assignment from the Chairman of the Legislative Council. This assignment resulted from a suggestion from the Committee on Resources Development that the appropriate Committees with jurisdiction over the subject matter look into the question of the impact of rapid coal development on their particular area of interest.

Thus, the Committee was to determine what steps the State should take, if any, to assist local law enforcement agencies in coping with the problems caused by rapid development. To aid it in considering this problem, the Committee heard testimony from law enforcement officials who had been involved in the areas of ABM construction in the northeast corner of the State. The Committee also heard testimony from law enforcement planners for a region encompassing several counties west of the Missouri River.

The Committee was also to receive data gathered as a result of preparation of an environmental statement by the Michigan Wisconsin Pipe Line Company; however, that data was not made available to the Committee before it had decided to take a more generalized step in aiding local law enforcement.

During the course of the Department of Public Safety study, referred to above, the Committee expressed a desire to gather more information concerning the needs of law enforcement on the local level. Therefore, the Committee directed the staff to mail a questionnaire to the mayor of each city in the State, and to the editors of 99 North Dakota newspapers. Additionally, most members of the Committee took it upon themselves to visit at least three local mayors, police commissioners, or police chiefs in their district or surrounding area, and they brought those persons' responses back to the Committee for its consideration.

At the time of collation of the questionnaires, answers had been received from 156 mayors (44.3 per

cent), a statistically significant number. Additionally, 23 editors (23.2 percent) had also answered. (Note: The number of responses to the questionnaire increased somewhat after first collation. The Combined Law Enforcement Council staff has agreed to collate all questionnaires through use of a computer program which can sort the significant data and arrive at statistical conclusions. That collation and report should be ready prior to the convening of the Regular Session of the Legislature.)

The questionnaires revealed that 59 percent of the mayors who responded do not believe that law enforcement services provided in their cities are "consistent with the community's law enforcement needs", while a majority (65 percent) of the answering editors believed that the services were consistent with the community's needs.

If the State were to provide financial assistance for local law enforcement: contract policing programs, crime prevention-related purchases, the police department, and improved police equipment were those items most often listed by the mayors as items on which the state financial assistance would be spent. Of the mayors in cities which were under contract policing agreements, 71 percent indicated that they planned to continue participation in such a program, and 29 percent were "uncertain" whether they would continue to participate. Those mayors who were "uncertain" indicated that the principal reason for their uncertainty was that they could not afford the program after federal funding (from the Combined Law Enforcement Council) expired, or that they were dissatisfied with the services provided by the Sheriff under the present contract arrangement. Another prominent reason was the mayors' desire for local control of police services.

A majority (67 of 107) of the mayors of cities without contract policing arrangements indicated an interest in participation in a contract policing program. They also indicated that the principal reason why they were not presently participating was that the city could not afford it without outside help. Of those mayors who were not interested in participating in a contract policing program, 100 percent gave a desire to maintain local control as one of the reasons for their answer.

The questionnaire also asked the mayors to answer a question which indicated several potential roles for the State Highway Patrol, including their present role in traffic enforcement on the state highways only. Of the 147 mayors who answered this question, 57 indicated that the Patrol should have primary traffic control responsibility on streets and highways, plus criminal law enforcement responsibilities upon request of counties or cities. Forty-two of the answering mayors indicated that the Highway Patrol should have general police powers

statewide. Overall, in terms of the frequency of the selection of an answer, the mayors thought that the Highway Patrol should play an expanded role, primarily in the area of traffic law enforcement.

The Committee then commenced consideration of a series of drafts of bills to provide State Assistance for Local Law Enforcement efforts (SALLE). The Committee held three hearings on the bills, two of which were well attended by representatives of cities and local law enforcement officials.

At the last meeting of the Committee, the North Dakota Peace Officers Association, through its representatives, expressed support for state financial assistance to local law enforcement agencies, but could not support the particular draft of a bill to provide that assistance then before the Committee. Instead, the law enforcement officers proposed that the Committee fund a program of insurance for law enforcement officers which would cover disability, or death in the line of duty, and provide for surviving dependents in the latter instance.

Additionally, some members of the Peace Officers Association presented a plan to distribute a portion of the insurance premium tax collected on automobile casualty policies issued in North Dakota. This plan would distribute those moneys to city police forces on much the same basis that a portion of the insurance premium tax on fire insurance policies is distributed to local fire departments.

Prior to its final discussion and debate on the SALLE bill draft, the Committee passed a motion to have its report indicate Committee support for the concept of State financial aid to local law enforcement. At the time this motion was pending, the fate of the bill was in doubt, and the motion did not receive unanimous support.

Believing that the Committee had to take some action to focus the Legislature's attention on specific proposals for State Assistance to Local Law Enforcement, the majority of the Committee is recommending a bill which would appropriate \$1.8 million to the Combined Law Enforcement Council to be distributed to the cities for use either in funding a contract policing program, or for general law enforcement purposes. Specifically, the bill provides that those cities over 2,000 population are to receive payments based on their population, in accordance with formulas established in the bill, or, in the alternative, can apply for a grant to fund a contract policing program between that city and a county sheriff, or a larger city's police force. Cities under 2,000 population would be eligible only to apply to the Law Enforcement Council for grants to pay part of the cost (25 percent) of a contract policing program.

The amounts received in accordance with the formulas set forth for the flat apportionment of funds to cities over 2,000 population would be in accordance with the following table:

City	Population	Amount Received Per Biennium
Bismarck	34,703	\$104,109
Bottineau	2,760	\$ 22,080
Carrington	2,491	\$ 19,928
Devils Lake	7,078	\$ 56,624
Dickinson	12,405	\$ 99,240
Fargo	53,365	\$160,095
Grafton	5,946	\$ 47,568
Grand Forks	40,060	\$120,180
Harvey	2,361	\$ 18,888
Jamestown	15,385	\$123,080
Langdon	3,923	\$ 31,384
Lisbon	2,090	\$ 16,720
Mandan	11,093	\$ 88,744
Mayville	2,554	\$ 20,432
Minot	32,290	\$ 96,870
Rugby	2,889	\$ 23,112
Valley City	7,843	\$ 62,744
Wahpeton	7,076	\$ 56,608
West Fargo	5,161	\$ 41,288
Williston	11,280	\$ 90,240

The formula contained in the bill would result in distribution of \$1,299,934 per biennium to cities over 2,000 in population. The Committee did not spend a great deal of time on the formula, and is aware that it may need revision. If each city over 2,000 population chose to accept the flat grant, there would be approximately \$435,000 remaining for funding of contract policing programs in cities with populations under 2,000. This is more money than was expended by the Combined Law Enforcement Council in support of contract policing programs during the years 1969 through 1973, inclusive, and would exceed their current level of expected funding of contract policing programs, both new and existent, by a substantial margin.

The bill would reduce the amount of any payments made under it by 100 percent of the amount of federal funds received from the Law Enforcement Council for the use of that city, or in direct payment to that city, in support of a contract policing arrangement.

Financial assistance payments, either flat grants or in support of contract policing agreements, will be for biennial periods, commencing in October of each odd-numbered year, with the first payments under the Act commencing in November 1975. Applications are to be made by mayors (defined by the bill to include presidents of city commissions), who are to have the support of their city council or city commission for submission of the application. In the

case of applications for financial assistance and support of a contract policing agreement, the agreement between the city and the State is to be ratified by a resolution of the city council or city commission, within 30 days after its execution by the mayor. If the agreement is not so ratified, the Law Enforcement Council is to cease payments under the agreement, and can recover unexpended funds by a civil action against the mayor personally, if necessary.

The bill provides that, prior to receiving any funding under the Act, the recipients are to conform to standards adopted, or promulgated by the Law Enforcement Council in accordance with the Administrative Agencies Practice Act. The Law Enforcement Council will also have authority to terminate payments under the Act and recover moneys previously paid and unexpended by an applicant if, after hearing, the Council is satisfied that the applicant has not maintained the standards promulgated or adopted by the Council, or is not performing the conditions of the agreement between the Council and the applicant.

The bill authorizes the Law Enforcement Council to promulgate rules and regulations governing its operations under the bill, and the methods to be used in granting financial assistance. Persons who willfully violate a promulgated rule or regulation are guilty of an infraction. Finally, the bill provides that the Council is to provide appropriate financial accounting, and a review and evaluation of the results achieved under the project or program. Periodic audits are also to be arranged for by the Council.

STATUTORY REVISION RESPONSIBILITY

The Legislative Council assigned the Committee a general responsibility to assume those statutory revision projects, within reasonable limits, which the Committee thought worthwhile. In line with this responsibility, the Committee acted on a request from the Governor relating to the compensation and expenses paid to agents appointed to receive and return persons from outside of North Dakota under extradition warrants.

The Committee believed that the Governor's suggestion was meritorious, and is therefore recommending a bill to amend Section 29-30-14 to increase the per diem paid to those persons who return fugitives from justice under extradition warrants from \$3 per day to \$20 per day.

The second, and major, revision effort by the Committee came as a result of a letter from the Chairman of the Legislative Council to the Chairman of the Committee. In that letter, Representative Streibel requested that the Committee take some

action to revise the current law on administrative disposition of traffic offenses, and the "point system" (hereinafter "point system law"), to lessen the effect on a person's driving record of driving without eyeglasses or contact lenses in violation of a restricted driver's license.

Representative Streibel cited an instance wherein a person had her driver's license suspended for the sole offense of driving without her glasses, as that offense, standing alone, resulted in the assessment of enough points for a one-week license suspension.

Once the Committee had undertaken responsibility to review the "point system" law, it received testimony from the Drivers' Licensing Division (formerly the Safety Responsibility Division) as to the workability of the current law. The testimony was to the effect that the current law was workable, but that certain changes should be made. The staff of the Legislative Council suggested several revisions of the "point system" law to the Committee, necessitated by amendments made to the original Act during the 1973 Session.

The Committee also heard testimony from interested citizens, including representatives of professional traveling salesmen, the courts, prosecutors, and from a representative of the Department of Public Instruction with respect to drivers' training.

The testimony from those responsible for administering the "point system", as well as from a municipal judge who operates under the administrative disposition provisions, was generally favorable. Testimony from representatives of traveling salesmen's associations indicated that the administrative disposition features of the bill were a step forward, but that the Committee should take great care to ensure that the "point system" was not modified so that it gave rise to the possibility of harassment charges resulting in points being assessed against a driver's record. The Committee recommends a bill to carry out most of the suggestions made to it during hearings on the subject of the "point system" law.

First, the bill would ensure that sheriffs are empowered to enforce the noncriminal traffic violation statutes, as there was some question about their authority under the current law. With respect to licensing 14-year-old children in certain instances, the bill would amend that section of law to require that in addition to other requirements, those children complete a course of classroom instruction and a course of behind-the-wheel instruction acceptable to the Highway Commissioner. Presently, the law only requires that the child complete six hours of behind-the-wheel instruction. Problems could arise under current law because commercial

driving schools do not generally offer the classroom courses, and the existing law is in conflict with standards set by the Department of Public Instruction. Another amendment would ensure that points could not be assessed against a resident driver's record for violations occurring in another state.

If, after an administrative disposition hearing, a person desires to appeal, the current law provides that the appellant can have a trial anew, including a trial by jury, in the District Court. The bill recommended by the Committee would provide that the appeal would be heard by the District Court, without a jury. Additionally, the bill cleans up the appellate procedure, sets the time limit for giving notice of appeal, and includes a provision for giving oral notice of appeal.

The provision deleting the right to a jury trial on appeal from an administrative disposition hearing was objected to strenuously by a minority of the Committee. However, the majority of the Committee felt that, since a right to a jury trial was not constitutionally required for non-criminal traffic violations, the process would be much speeded, and governmental expense would be reduced by having all appeals from administrative disposition hearings heard by the District Court without a jury.

The section which deals with the penalty for failure to appear at an administrative hearing, to pay a statutory fee, or to post and forfeit bond has been amended to provide that failure to appear at the hearing is also to be deemed an admission of commission of the violation charged. Thus, points can be assessed against a driver's record when he fails to appear to answer to a charge, or fails to pay the statutory fee or post and forfeit bond.

The listing of driving offenses which will remain criminal has been amended to include the offense of being "in actual physical control" of a vehicle while under the influence of intoxicating liquor or a controlled substance. That offense was inadvertently omitted when the bill was first introduced. Additionally, driving without a license is included among those criminal offenses for which the administrative disposition procedures are not available.

The section which authorizes the licensing authority to prepare a notification form to be handed out to offenders and violators at the point of apprehension is amended to ensure that the notification form will contain a schedule of the statutory fees which can be charged, and the bond amounts which can be posted for each type of violation or offense.

Under current law, a licensee can reduce the number of points on his driver's record by one point

for each eight hours of driver training instruction satisfactorily completed. The Committee bill would amend that provision to allow a three-point reduction for satisfactory completion of an eight-hour driver training course, but only one such reduction would be allowed during any 12-month period, and a driver could not have more than nine points reduced from his record for completion of driver training courses during any three-year period.

Current law provides that when a summons is issued, it is to specify a time of hearing "at least five days" after issuance of the summons unless the person halted would demand an earlier hearing. The Committee heard testimony that this section could be utilized to prevent timely disposition of traffic offenders, because, as it presently reads, an offender could demand that his hearing be at least five days after issuance of the summons. The Committee bill would recommend amendment of this section to provide that the hearing is to be held within 10 days after issuance of the summons.

Two offenses to be known as "drag racing" and "exhibition driving" are created by the Committee bill. They are to be non-criminal violations, and the statutory fee for commission of those offenses is \$40. Therefore, the administrative disposition procedures would be available for a person who was guilty of drag racing or exhibition driving. Two current sections of the Code which deal with "hit and run" offenses involving only property damage are amended to classify them as class A misdemeanors.

The heart of the bill is in the amendments to Section 39-06-1-10 which sets out the actual points which are to be assessed for commission of certain violations or offenses. During the last Session, the original bill was amended in such a way that several important types of traffic violations were deleted from the point assignment schedule; for instance, failure to stop at a stop sign. Additionally, it was noted that in speeding charges, where the speed charged was in excess of 15 miles per hour, there was no differentiation in points assessed between a person driving 16 miles per hour over the speed limit or 45 miles per hour over the speed limit.

Further, the current law would assess 12 points, enough to cause a one week's restriction standing alone, for violating restrictions contained in a restricted driver's license, or a certificate to drive issued by the District Court under the point system appeal procedure.

The Committee bill would amend the point assignments for speeding to provide a variable assignment, with two points being assessed for speeding from nine to 15 miles per hour over the lawful limit; four points for speeding from 16 to 25 miles per hour over the lawful limit; and six points

for speeding 26 or more miles per hour over the lawful limit. The provision assigning points for driving with a restricted license is reduced to four points in most instances, and to three points in cases where the restriction is related to the use of eyeglasses or contact lenses.

The Committee bill deletes all references to the assignment of points for driving "while an habitual user of narcotic drugs". The Committee's rationale for this action is that it would be impossible to get a successful conviction of driving while an habitual user, unless the driver was in fact under the influence of a controlled substance. (Note: The Committee on Judiciary "A" is recommending repeal of the basic section which defines the offense of driving while an habitual user of narcotic drugs.) The Committee also took steps to delete all references to "narcotic drugs" in the traffic offense code, and to substitute "controlled substances" therefor.

The offense of "exhibition driving" is assigned six points, while the offense of "drag racing" is assigned 10 points. New violations for failing to yield the right-of-way, and disobeying a traffic-control signal are created and persons committing those violations would be assessed four points.

A person driving on the wrong side of the road would be assessed three points, while unlawful passing, disregarding the lawful commands of a police officer, and knowingly driving with defective brakes would be assessed two points. Failing to dim headlights when required by statute or ordinance, or failing when required to stop at a railroad crossing, would be assessed one point.

The bill would differentiate between the offenses of driving while under the influence of liquor or controlled substances, and the offense of "being in actual physical control of the motor vehicle" while under the influence of liquor or controlled substances. The rationale for this differentiation is the Committee's desire to offer some incentive to have the driver who is under the influence to pull to the side of the road, rather than continue driving. Therefore, the Committee bill will continue to assess 15 points for DWI, but will only assess six points for "being in actual physical control".

Finally, the Committee bill will allow cities to enact ordinances which assess penalties for failure to appear at traffic violation hearings. The bill also makes several "housekeeping" changes to ensure its smooth administration.

MODEL LAWS RESPONSIBILITY

In response to its assigned responsibility to review Uniform and Model Acts, the Committee considered summaries of 15 different Uniform and Model Acts. However, because the Committee realized that its workload during the interim would be very heavy, it determined to focus such attention as it was going to give to Uniform and Model Acts on those Acts which bore some relation to its other studies.

Therefore, the Committee reviewed a Model State Department of Corrections Act, and a Model Rural Police Protection Act. The former Act would create a State Department of Correction with jurisdiction over all state-level correctional institutions and county and municipal jails. After some discussion, the Committee took no action with respect to that bill. This inaction primarily resulted from lack of time, and a belief that another of the interim Legislative Council committees might also take action to create a Department of Corrections.

The second bill, the Rural Police Protection Act, would have authorized members of the Highway Patrol to serve rural areas as general purpose policemen. At the hearing on this bill, a great deal of opposition was expressed by law enforcement officers, and the Committee gave no further consideration to the bill.

MISCELLANEOUS

During the course of its study, the Committee was kept apprised of the activities of the Criminal Justice Commission. Additionally, it heard testimony from a member of the Highway Patrol concerning the curriculum at the Law Enforcement Training Center. Finally, note should be taken of the fact that a portion of the operating expense of the Committee was funded by a grant, in addition to the grant previously mentioned to fund the consulting study, from the Combined Law Enforcement Council.

LEGISLATIVE PROCEDURE AND ARRANGEMENTS

The Legislative Council is directed by Section 54-35-11 of the Century Code to make all necessary arrangements, except for the employment of legislative employees during the Regular Session, to facilitate the proper convening and operation of the Legislative Assembly. This responsibility, along with the responsibility to study and recommend any necessary changes in legislative procedures, was assigned to the Committee on Legislative Procedure and Arrangements, consisting of Representatives A.G. Bunker, Chairman; Richard Backes, Bryce Streibel, Earl Strinden, and Francis E. Weber; and Senators L. D. Christensen, Lester Larson, C. Warner Litten, and Robert M. Nasset.

INTRODUCTION

As has been the case in the past, the Committee's activities and recommendations for the Forty-fourth Legislative Assembly cover almost the entire spectrum of legislative affairs. The Committee recommends numerous amendments to the Legislative Rules of both Houses and to the Joint Legislative Rules, including amendments to provide for recorded roll call votes on any floor action which would result in final disposition of a bill.

The Committee also gave serious consideration to the legislative space situation, and, in accordance with the requirements of law, has prepared an agenda for the December Organizational Session, to be held on December 3-5, 1974. The Legislative Internship Program was also approved by the Committee and renewed for the forthcoming Session. These actions, and numerous others, will be discussed in the text of this report.

The report of the Committee on Legislative Procedure and Arrangements was submitted to the Legislative Council at the biennial meeting of the Council held at Bismarck. The report and recommended legislation were adopted for submission to the Forty-fourth Legislative Assembly by the Legislative Council in November 1974.

LEGISLATIVE INTERNSHIP PROGRAM

The Committee reviewed the Legislative Internship Program which has been in effect during the last three Legislative Sessions. It was noted that funding for the compensation paid to six of the 14 interns serving during the 1973 Session was provided by a federal grant from the State Office of Economic Opportunity. The Committee decided that the Internship Program was worthwhile, and, even though total funding of the program would be from

the legislative appropriation, is recommending that the program be continued at the same level as during the 1973 Session.

Therefore, the Committee has approved the selection of 14 interns from the following institutions: from North Dakota State University — three graduate interns; from the Law School at the University of North Dakota — six interns; from the Department of Political Science, University of North Dakota — three graduate interns and two undergraduate Bill Status Reporters. The compensation for legislative interns will not be changed from that paid during the last Session, i.e., \$600 per month.

As has been the case during the past three Sessions, the legislative interns will be under the overall supervision of the Legislative Council staff. However, the Committee has authorized the Legislative Council staff to employ Mr. Boyd Wright, a former intern and presently the Assistant Director of the Bureau of Governmental Affairs at the University, as immediate supervisor of the Internship Program during the Session. Mr. Wright will be assigned as a member of the professional staff of the Legislative Council with principal responsibility for overseeing the Internship Program, although he will handle other usual staff assignments.

As was also the case during the last Session, an intern will be assigned to each of the standing committees, with the exception of the Appropriations Committee in each House. Additionally, one intern will be assigned to serve the caucuses of each major political party.

LEGISLATIVE RULES AMENDMENTS

At its first meeting, the Committee heard testimony from a representative of the North Dakota Wildlife Federation and the Lewis and Clark Environmental Association. He indicated that both those organizations had passed resolutions urging the Legislature to amend its rules to:

1. Provide for roll call votes in Committee, with the vote being made part of the Committee report and the tally recorded in the daily Journal;
2. Provide that Committee recommendations for indefinite postponement go on the calendar for consideration the next legislative day with the individual vote being recorded in the Journal; and

3. Provide that voice votes be abolished, and that all floor votes be recorded in the Journal.

In considering this subject further, the Committee heard testimony on the approximate cost of the proposal. It was noted that a full page in the House Journal during the last Session cost \$30, and that there were 205 indefinite postponements of both House and Senate bills in the House during that Session. A roll call in the House takes up a full page of the Journal, and thus to record the roll call votes on a number of indefinite postponements equivalent to those occurring in 1973 would cost \$6,150. The cost of a similar amount of indefinite postponements in the Senate would be approximately 50 percent of the House cost, for a total estimated cost of \$9,200. Additionally, the estimated cost for printing recorded roll call votes in committee in the Journal was set at \$21,900 for the House and a total of \$32,400 if committee roll call votes were recorded in the Journal in both Houses.

The Committee discussed the desirability of requiring recorded roll call votes in committees and recording them in the Journals; and of requiring recorded roll call votes on the floor in each instance in which the floor action could result in final disposition of a bill. The Committee determined that requiring roll call votes in floor action would be more sufficient, and would allow a constituent to be aware of his legislator's stance on a particular bill.

Therefore the Committee is recommending the creation of Senate Rule No. 55.1 and House Rule No. 56.1 which would provide that no action may be taken on the floor of the House or Senate "which may result in final disposition of a bill", or a constitutional amendment resolution, unless a recorded roll call vote is taken, and the vote of each member, or a record of his absence or failure to vote, is recorded in the Journal of that House. The proposed rules define "final disposition" as any procedure which, barring reconsideration, results in the House being unable to give further consideration during that Session to the measure on which it had voted.

In addition to the Wildlife Federation representative, the Committee heard from several legislators who desired a rules change to cause committee reports for indefinite postponements to be laid over one legislative day. Accordingly, the Committee is recommending amendments to House Rules Nos. 4 and 47, and Senate Rules Nos. 4 and 46. These amendments would add consideration of indefinite postponement committee reports to the Sixth Order of Business, and would provide that the Committee report for indefinite postponement will be considered the next legislative day under the Sixth Order. Thus, the report of the committee will not be voted on when it is received, but rather will be voted on during consideration of Sixth Order business.

While it was considering the draft of amendments to House Rule No. 47 and Senate Rule No. 46, the Committee decided that it would save time if standing committee reports for "do pass" were also placed directly on the calendar, without the necessity for adopting the report. Therefore, those two rules are further amended to provide that committee "do pass" reports will result in the bill, or resolution, receiving that recommendation going directly on the calendar for the next legislative day.

The latter two rules are also amended to provide that if a legislator moves that an indefinite postponement report be substituted for the initial committee report, the question of indefinite postponement, if the motion carries, is to be laid over until the next legislative day for consideration under the Sixth Order. Finally, those rules are amended to delete all references to "bill" and substitute the word "measure" therefor, to ensure that the procedure utilized in handling standing committee reports will be the same for both bills and resolutions.

The Committee recommends amendments to Senate Rule No. 29 and House Rule No. 30 to shorten the period for introduction of concurrent resolutions, except those resolutions proposing constitutional amendments or directing a Legislative Council study. With the Exception of the latter two types of resolutions, all resolutions would be required to be introduced by the 18th legislative day, or else they would have to be introduced by the Committee on Delayed Bills.

Resolutions proposing constitutional amendments or directing Legislative Council studies would not be introduced after the 33rd legislative day, and will be reported back from standing committees, if referred, no later than the 44th legislative day. If a constitutional amendment resolution or Legislative Council study resolution is not reported back by the 44th legislative day, it will either go on the calendar automatically without recommendation, or, in the case of Legislative Council study resolutions, will be re-referred to the Legislative Council Resolutions Committee of the House of its introduction.

In order to give legislators a period of time where they can work at their desks free of interruptions, the Committee is recommending amendments to Senate and House Rules Nos. 9 which set forth the duties of the Sergeants-at-Arms in both Houses. The Sergeant-at-Arms is directed to clear the floor of the House or Senate Chambers in front of the railing. He is to ask all persons, except legislators, legislative employees, and members of the press, to leave the area during a time period commencing 15 minutes before that House convenes, and ending when the House recesses for that calendar day.

The Committee discussed the subject of the necessary super-majority to suspend Legislative Rules, and it was noted that those super-majorities ranged from two-thirds of the members-elect to unanimous consent of all members present. Confusion often arises as to which size majority applies. It was the Committee's belief that a vote of two-thirds of the members-elect should be sufficient to override any Legislative Rule and to take any procedural action not in violation of the Constitution.

Therefore, the Committee is recommending amendments to House Rules Nos. 13 and 28, Senate Rules Nos. 13 and 27, and Joint Rule No. 16. These amendments would provide that any Standing Rule of the House or Senate can be suspended by a two-thirds vote of the members-elect. This would include the provisions of Rule No. 13 which presently limits the ability of a particular member to speak on a given subject to a certain amount of time, unless he receives unanimous consent. Under the proposed amendment, he could move that the rules be suspended if he desired to speak longer than the time limit set in Rule No. 13.

Additionally, these amendments would provide that a bill recommended for placement on the consent calendar would remain there unless objection to its remaining there was received from one-third of the members-elect, or unless the measure was amended from the floor.

During its deliberations, the Committee expressed concern over the fact that the legislative intent in enacting a particular measure, or adopting amendments thereto, was not always easily determined, and that, in many cases, the standing committee minutes could be clearer with respect to legislative intent. Additionally, the statements of legislative intent prepared by the Appropriations Committees could, in some cases, be more specific with respect to the intent of the Committee in adopting a particular amendment.

The Committee heard testimony to the effect that the Senate, during the last Session, employed one Committee Clerk for each standing committee, and that seemed to result in more comprehensive committee minutes. Therefore, in order to cause that same improvement to appear in the House, the Committee is recommending an amendment to House Rule No. 86 to increase the number of Committee Clerks to be hired from seven to 12, so that each standing committee can be assigned a Committee Clerk. The Committee also believes that this should reduce the number of overtime hours which the Committee Clerks will have to work and reduce overtime payments under the new Federal Wage and Hour Act.

The Committee is aware that this proposal will, if accepted, cause strain on the available legislative space, and would recommend that the additional Committee Clerks be housed in their committee rooms, and switch facilities with the Committee Clerks who must use that same room during the remainder of the week. For instance, a Committee Clerk with a three-day committee would utilize the committee room as her office during the three days that her committee meets during each week, and would utilize Room G-7 (trading desks with the Committee Clerk who staffs the two-day committee utilizing that same committee room) during the remainder of the week.

In order to clarify the situations in which the "ayes and nays" are to be recorded in the Journal, the Committee recommends amendments to House Rules Nos. 20 and 24 and Senate Rules Nos. 20 and 23. The amendments would provide that the Speaker, when a division has been called for, would only use the total ayes and nays to determine if the question prevailed, and the fact that the question either prevailed or failed would be entered in the Journal of the appropriate House without mention of the number of ayes or nays. Additionally, when the ayes and nays are ordered upon demand of one-sixth of the members present, the results will be printed in the Journal in their entirety.

The Committee received a recommendation from a legislator that the appropriate rules be amended so that bills and resolutions which carry an appropriation of less than \$5,000 need not be referred or re-referred to the Appropriations Committee. The Committee accepted that recommendation and is recommending amendments to House Rules Nos. 39 and 40 and Senate Rules Nos. 38 and 39. The amendments will simply delete the current reference to \$2,000 and insert a reference to \$5,000 in lieu thereof.

The Committee is proposing amendments to Senate Rule No. 44 and House Rule No. 45 which provide deadlines for reporting bills or resolutions, except appropriations measures, out of the committees to which they were referred. The amendments provide that all House and Senate bills and resolutions, except resolutions proposing amendments to the North Dakota or United States Constitutions or directing Legislative Council studies, are to be reported back to the House of origin no later than the 31st legislative day. Additionally, Senate Rule No. 44 is amended to make its language coordinate with the current and amended language of House Rule No. 45.

Finally, the Committee is recommending repeal of Joint Legislative Rule No. 23 which was enacted during the 1973 Session. That rule created the Joint Standing Committee on Reapportionment which will probably no longer have a function.

Prior to considering proposed rules amendments, and other items relating to legislative procedure or arrangements, the Chairman of the Committee directed the staff to mail a questionnaire to all members of the Legislature asking their opinion on certain items. The questionnaire was mailed in November 1973, and 78.4% (116) of the legislators then in office replied.

Sixty-one legislators (52.6 percent) felt that provision should be made for recording the vote on all committee reports for indefinite postponement when they were considered on the floor of either House. Fifty-three legislators (45.7 percent) felt that a recorded roll call vote should be taken on any other motion or procedural point which could result in the final disposition of a bill or resolution.

Seventy-five (64.7 percent) of the answering legislators felt that a bipartisan screening committee should be created and charged with the responsibility for screening all resolutions, except those resolutions proposing constitutional amendments, prior to their introduction.

LEGISLATIVE SPACE FACILITIES

The Committee heard a request from the Attorney General that his office be allowed to continue using the space known as the "Attorney General's Licensing Office" during the next Session. While the Committee was in sympathy with his request, the space simply could not be spared, and the Attorney General was requested to vacate the "Licensing Office" for the duration of the Session. However, the Legislative Council staff was able to secure agreement by the Highway Commissioner that the Attorney General could utilize Room G-14 off the Highway Auditorium during that period.

The Committee heard the Director of Institutions present a proposal for "air quality control" throughout the Capitol Building. The proposal had been prepared by the engineering consulting firm of Schmit, Smith & Rush and would require the installation of new windows throughout the building, the lowering of the ceilings in the tower (floors 3 through 17), and the installation of duct work above those lowered ceilings in the tower.

The proposed system would provide individualized climate control in each office in the Capitol during both winter and summer. It is estimated that 50 percent of the natural gas presently utilized during the winter months could be saved if this system were installed. The dollar amounts resulting from that saving, plus the savings in electricity due to the removal of approximately 200 window air conditioners would pay for the cost of operating the air quality control system. The consulting firm noted that the estimated project costs were \$2.6 million, but that estimate was inflated to

take into account 1976 costs. He estimated that it would be approximately \$400,000 less if it could be done immediately.

The Committee appreciated the need to update air quality control in the Capitol, and passed a motion urging the Director of Institutions to include the Legislative Wing in his planning for the air quality control project, and urging the Governor to include the air quality control project in the Director of Institutions' budget.

The Committee heard testimony from a representative of the press indicating that members of the press would like space to be made available for use by representatives of the weekly newspapers when they are in attendance at the Session. The press representative noted that Sigma Delta Chi, the professional fraternity, had passed a resolution urging that such space be provided.

Additionally, the Committee was told that the press would appreciate being assigned reserved parking spaces close to the Legislative Wing, and would like to have a weekly newspaper pressroom furnished with a telephone, typewriter, table, and chair.

The Committee accepted these recommendations, and is, in turn, recommending that the room utilized as the Senate Supply Room during the last Session be converted to a "weekly newspaper pressroom". The Committee then recommends that the House and Senate operate a Joint Supply Room during the 1975 Session, as is presently authorized by Senate and House Rule No. 9.

The Committee directed the staff to contact the Director of Institutions and request him to reserve six parking spaces for the "working press" close to the west entrance to the Capitol, and to also reserve parking spaces for the Majority and Minority Leaders of both Houses, and the Speaker of the House.

The Committee also discussed the desirability of refurbishing the Large Hearing Room, carpeting the floor, and providing permanent seating for spectators. The Committee directed the Council staff to consult with appropriate persons concerning the feasibility and costs of rejuvenating and refurbishing the Large Hearing Room immediately following the Legislative Session.

LEGISLATIVE EMPLOYEES' COMPENSATION

Noting the requirements of the 1974 Federal Wage and Hour Act Amendments, the Committee directed the staff to purchase two time clocks with the ability to punch time cards. These time clocks would be used by Senate and House legislative em-

ployees in order to keep track of their time to determine whether overtime compensation is due to any particular employee. In addition, the Committee directed the staff to prepare a compensation and time scheduling plan for use by legislative employees during the Session.

LEGISLATIVE STAFFING

The Committee heard a request from one of its members that action be taken to increase the number of professional staff personnel serving the Legislative Council in order that there might be a person assigned to the finance and taxation field, a person assigned to the education field, and a statistician who could do statistical analysis and correlations with respect to education, taxation, and other fields.

The Committee was presented with two alternative staffing recommendations, one providing for an attorney to work in the tax field, a statistician to work in tax and other fields, and a specialist in education, plus a secretary to pick up the increased clerical load. The second alternative provides for an attorney to work in the tax field, a statistician to work in tax and other fields, and a secretary to handle the increased clerical load.

It was pointed out to the Committee that any increase in the number of professional staff personnel was going to put a strain on the available physical facilities, and also on the ability of other staff personnel to train the newly employed personnel. Taking all of these factors into account, the Committee still believes it imperative that the staffing level of the Legislative Council be such that it aids in the maintenance of the citizen-legislator concept by providing citizen-legislators with comprehensive research on the questions which they must have answered in order to make adequate legislative policy decisions and provide the service needed to carry on legislative work.

The Committee, therefore, is recommending that the Legislative Council budget be increased by \$102,190 for the 1975-77 biennium to cover the cost of salary and necessary office equipment for one additional attorney to be employed primarily in the taxation field, one statistician to work primarily in the taxation and education fields, but also elsewhere where his skills would be valuable, and one secretary to handle the increased clerical load. It should be noted that a specialist in science, technology, and environmental fields and a research librarian had previously been included as new positions in the Legislative Council budget in the amount of \$69,160.

ORGANIZATIONAL SESSION

The Committee approved the agenda for the Organizational Session to be held on December 3-5,

1974. As has been the case in the past, 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 3, 1974 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.

LEGISLATIVE DATA PROCESSING

The Committee considered the desirability of again having a cathode ray tube terminal in the Memorial Hallway for visual presentation of the Bill Status Report as was done during most of the last Session. The Committee heard testimony from the Director of the Central Data Processing Division that it would cost approximately \$1,500 to reprogram the new central computer to allow operation of a Bill Status Report terminal. This additional cost was caused by two factors. First, by the fact that the Central Data Processing Division had acquired a new computer since the programs were used last Session, and second, because the programs which were used last Session were jury-rigged by personnel employed by IBM Corp., and the corporation would not sell the programs to the Central Data Processing Division because they were not adequately documented, and because of legal restrictions on such sales by IBM.

The Committee determined that the Bill Status Report terminal was worthwhile, and directed the staff of the Legislative Council to arrange for the installation of a Bill Status Report terminal in the Memorial Hallway during the 1975 Session. The staff was also authorized to expend the necessary funds, from the Legislative appropriation, to accomplish the installation and operation of such a terminal.

The Committee considered the desirability of installing terminals in the Legislative Council office to allow automated bill preparation during the next Session. Initially, the Committee thought it might be possible to utilize a system presently being utilized by the Iowa Legislative Council. Certain members of the Committee, members of the Council staff, and the Central Data Processing Division Director traveled to Iowa and reviewed their system with the Director of the Legislative Council staff there, as well as with the Director of Iowa's Data Processing Center. The Director of North Dakota's Central Data Processing Division made additional

inquiries and studies, and arrived at the conclusion that it was not desirable to bring Iowa's system to North Dakota in its present form.

Thereafter, the Committee considered the use of a text management program being marketed by IBM and known as ATMS. The system seemed to meet the bill preparation needs of the Council staff, but did not allow for the retrieval of existing sections of the Century Code from the data base already stored at the computer center. However, the Committee felt that it might be useful to utilize ATMS during the forthcoming Session on a trial basis prior to making full utilization of it during the 1977 Session.

Therefore, the Committee directed the staff, if it made a final determination of feasibility, to secure the necessary cathode ray tube and hard copy terminals to allow one automated bill preparation station to function in the Legislative Council staff office during the next Session. The cost of such station is to be paid from the data processing line item of the legislative appropriation.

MISCELLANEOUS

On recommendation of the staff, the Committee considered a bill draft to provide a solution to a potential problem. The problem could arise when two or more concurrent resolutions, adopted during the same Session, would propose to create or amend, or amend and repeal, the same section of the North Dakota Constitution.

In that case, the bill being recommended by the Committee would provide that the Secretary of State, in consultation with the Attorney General, must determine if the proposals are irreconcilable. If he determines that they are, the resolution last

adopted by the Legislature, which determination is to be made by the Legislative Council or its designee, is to be placed on the ballot. If the Secretary of State determines that the two concurrent resolutions propose to amend or create the same section, and the proposed sections are reconcilable, the Legislative Council, or its designee, is to prepare a reconciled text and submit it to the Secretary of State for inclusion on the ballot.

Noting the tradition which commenced during the last Session, and also noting the desirability of hearing from the Judicial Branch, the Committee directed the staff to issue an invitation to Chief Justice Ralph Erickstad to present a "State of the Judiciary" address on the opening day of the Regular Session.

In order to relieve interim committee chairmen of the burden of summarizing the reports of their committees for presentation during the Organizational Session, the Committee directed the staff to make that presentation. The time allotted for presentation of the report is to be split between the chairman and the staff member serving his committee. The chairman will make whatever opening statement he deems appropriate, and the staff member will present the summary of the report.

Other miscellaneous action taken by the Committee includes authorization for the staff to hire the necessary employees to work during the Organizational Session, and to arrange for installation of the telephone system utilized during the Session. No changes in the telephone system utilized during the last Session are being recommended. Finally, the Committee directed the staff to acquire several large size maps and have them placed in appropriate committee rooms utilized during the Session.

MEDICAL EDUCATION AND GOVERNMENT ADMINISTRATION

Senate Concurrent Resolution No. 4001 of the Forty-third Legislative Assembly directed the Legislative Council to review during the 1973-75 biennium the efforts of area Social Service Centers and Comprehensive Community Mental Health Centers to coordinate human services. Senate Bill No. 2401 of the Forty-third Legislative Assembly authorized and directed the Legislative Council to maintain a committee to study and review medical education services in North Dakota. The Board of Higher Education was directed to submit agreements or contracts entered into pursuant to Senate Bill No. 2401 to such Committee for review and approval. In addition to studies assigned to the Committee pursuant to these measures, the Committee reviewed the needs for additional dentists, optometrists, and veterinarians in the State of North Dakota and the opportunity students interested in these professions have in obtaining an education leading to degrees in these programs. In addition, the Committee heard reports regarding off-reservation Indian health needs and Touche Ross & Co. recommendations regarding the transfer of the Division of Vocational Rehabilitation to the State Social Service Board.

Members of the Committee on Medical Education and Government Administration were: Representatives Oscar Solberg, Chairman, Aloha Eagles, Ralph Dotzenrod, Brynhild Haugland, Marjorie Kermott, Eugene Laske, Vernon Wagner; and Senators Robert M. Nasset, Vice Chairman; Walter Erdman, C. Warner Litten, George Longmire, and Frank Wenstrom. The organizational meeting of the Committee was held on June 20, 1973.

The report of the Committee on Medical Education and Government Administration was submitted to the Legislative Council at the biennial meeting of the Council held at Bismarck. The report and recommended legislation were adopted for submission to the Forty-fourth Legislative Assembly by the Legislative Council in November 1974.

DELIVERY OF HUMAN SERVICES

Senate Concurrent Resolution No. 4001 included the following provisions calling for coordination and consolidation in the delivery of human services on the local level:

That the State Departments of Health and Social Services be directed to provide such guidance to the Badlands Human Service Center, Dickinson, North Dakota, and the Northwest Human Service Center, Williston, North Dakota,

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 services; and

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; and

That the Departments of Health and Social Services 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; and

That the Departments of Health and Social Services, and the Directors and Board members of area social service centers and community mental health and retardation centers report on their actions taken pursuant to this resolution on a regular basis to the Legislative Council or a Council committee designated by it during the 1973-75 biennium.

Efforts that took place during the current interim to bring human service agencies into one facility are as follows:

Grand Forks

The Area Social Service Center and the Northeast Mental Health and Retardation Center are both members of the Greater Grand Forks Interagency Forum, an agency composed of representatives of 55 different agencies in Grand Forks. This forum is presently seeking moneys to conduct a planning study to develop a human services center, a building which would house several agencies under one roof and would be located on the medical park complex in Grand Forks.

Bismarck-Mandan

It was indicated that although attempts have been made to establish one facility to house both the Memorial Mental Health and Retardation Center and the Social and Rehabilitation Services Center, these two agencies continue to operate out of separate facilities. However, the Social and Rehabilitation Services Center is a combination of three previously separated ser-

vice programs: The Area Social Service Center, Burleigh County Social Service Board, and the Regional Office of Vocational Rehabilitation.

Jamestown

Representatives from the South Central Mental Health and Retardation Center indicated that talks have been initiated with Urban Renewal personnel and local architects in conjunction with the planned city-county building, but no definite plans have been formulated. Representatives from the Jamestown Area Social Service Center indicated that they have not been involved in any efforts in the community to bring a number of human service agencies into one facility.

Minot

The Minot Area Social Service Center is currently housed in the Oppen Family Guidance Institute complex. The complex includes the regional office of Lutheran Social Services, Children's Village Family Service, and North Dakota Probation and Parole offices. Negotiations are currently in progress for location in the complex of the Regional Office of Catholic Welfare. Representatives from the North Central Mental Health and Retardation Center indicated that they have not been involved in any efforts in the community to bring a number of human service agencies into one facility.

Fargo

The Southeast Mental Health and Retardation Center presently maintains five separate locations in Fargo and provides services out of other facilities located throughout the Southeast region. The Fargo Area Social Service Center co-locates with the Regional Vocational Rehabilitation Office, and the Parole and Probation Department. Also, the Fargo ASSC recently participated in a United Community Council which attempted to bring human service agencies together; however, no physical movement resulted.

Devils Lake

The Devils Lake Comprehensive Human Services Center Project and Area Social Service Center operate out of one facility that also houses the Social Security Administration, Retired Senior Volunteer Program, State Probation and Parole, Council on Alcohol and Drug Problems, and the Regional Office of Vocational Rehabilitation. These eight agencies are all co-located in a quadrangle of buildings which also houses the Combined Law Enforcement Center and Employment Security Bureau. It is also anticipated

that in the near future federal probation and/or parole personnel will also be housed in the Human Service Center.

Dickinson

As of August 1, 1974, the Badlands Human Service Center, the Southwest Health Unit, and the Vocational Rehabilitation office have occupied four of the six floors of Pulver Hall Dormitory on the Dickinson State College campus. It was pointed out that Pulver Hall, a revenue bond building constructed in 1967, was only half occupied by students last school year while another dormitory stood empty. The agencies presently located in the dormitory pay a \$1.91 per sq. ft. of the building occupied. As well as providing centralized human services, this type of arrangement has provided revenue for the college to meet the revenue bond payments on Pulver Hall.

Williston

In addition to being a consolidated agency encompassing the Williston Area Social Service Center, Williams County Alcoholism Center, and the Mental Health and Retardation Center, the Northwest Human Resource Center co-locates with probation and parole offices and plans to co-locate with the Regional Vocational Rehabilitation office and District Health Unit.

WILLISTON AND DICKINSON CENTERS

During the 1971-73 biennium, the Legislative Council Committee on Government Administration, with Representative Earl Strinden as Chairman, encouraged the development of human service centers in the Williston and Dickinson areas. The Committee heard progress reports from both centers during the current biennium. The Badlands Human Service Center in Dickinson is currently providing the community with alcohol and drug services, mental health and retardation services, and social services in cooperation with county welfare boards, vocational rehabilitation, St. Joseph's Hospital, the Southwest Council on Alcohol and Drug Abuse, and the Southwest Health Unit. The director of the Badlands Human Service Center, Mr. Lee Smutzler reported to the Committee at its October 11, 1974, meeting that the center has accomplished the establishment of a center where people with problems can come for help. He reported that the center's operation is considered a success and that the Board of Directors has developed as a good liaison board to work with the community. Of the eight counties in the Dickinson region, only Billings County has not voted for the three-fourths mill levy for mental health. It was also reported that the center has moved its office to Pulver Hall, which was

previously a dormitory on the Dickinson State College Campus.

The Northwest Human Resources Center, Williston, encompasses the Williston Area Social Service Center, the Williams County Alcoholism Center, and the Region One Mental Health and Retardation Center. In addition, the Center co-locates with probation and parole offices and intends to co-locate with the Regional Vocational Rehabilitation office and District Health Unit.

Dr. Tergee Fokstuen, Psychiatrist and Director of the Northwest Human Resources Center, said that most people in that area are satisfied with the Northwest Human Resources Center and the services it provides. It was his recommendation that the State should give the Williston and Dickinson Centers two more years before requiring a consolidation in other areas based upon the Williston and Dickinson experience.

In regard to the services provided by the State Social Service Board and the State Department of Health to area social service centers and comprehensive mental health and retardation centers, representatives of the departments reported to the Committee at its final meeting that federal rules and regulations make cooperative efforts of this nature very difficult, especially when three levels of government are involved. The Executive Director of the State Social Service Board reported that even though the departments are faced with funding problems and restrictive federal rules and regulations, it is his belief that the State should continue its efforts to improve the coordinated delivery of human services on a local level. The State Mental Health Officer advised the Committee that as the State proceeds to develop its human services programs, it needs to become more sophisticated in its understanding of federal rules and regulations. He also expressed the opinion that as the State proceeds to develop its human services program, he does not believe that the State can feel secure in using federal funding as a basis for building the programs of the future.

BISMARCK CENTER

In addition to efforts in the Williston and Dickinson areas to consolidate the delivery of human services on the local level, a social and rehabilitation services center was established in Bismarck. This center is providing human services in the Bismarck-Mandan region from a consolidated unit which was previously provided by the Burleigh County Welfare Board, the State Division of Vocational Rehabilitation, and the Area Social Service Center.

DEVILS LAKE CENTER

In the Devils Lake area, the Devils Lake Human Services Center, which is currently being funded under a federal grant, is scheduled to be discontinued on February 28, 1975. The Devils Lake Human Services Center project, with its staff is a federal research project aimed at developing a plan for bringing together, coordinating, and integrating already existing human service agencies. Some of the kinds of coordinated and integrated efforts include: co-location, consolidation of some administrative services, sharing in joint use of staff and facilities, joint staff meetings, joint planning and programming, centralized intake services, and the development of a common information system and monitoring service. The co-located agencies include social services, vocational rehabilitation, probation and parole, retired senior volunteer program, Lake Region Council on Alcoholism and Drug Abuse, legal aid services, and Social Security. The non-co-located agencies included in the project are the North Dakota Employment Bureau, the Public Health Department, Vocational Education, Lake Region Junior College, public schools, extension services, law enforcement and correctional service, Indian public health services, and the social service departments of Benson, Eddy, Towner, Ramsey, Cavalier, and Rolette Counties.

Since state funds are not available to continue the research project, the Devils Lake Human Services Center will not continue unless special action is taken on either the part of state agencies involved or the community. At the last Committee meeting, the Committee received correspondence from the County Commissioners in Towner County, Rolette County, Benson County, Cavalier County, and Ramsey County expressing interest in establishing a Human Service Center in Region 3 under Section 54-50-09 of the North Dakota Century Code. Section 54-40-09 provides for the establishment of human service centers under the joint exercise of governmental powers section of the North Dakota Century Code and was enacted pursuant to a recommendation of the 1971-73 Legislative Council Committee on Government Administration. The Director of the Devils Lake Human Services project presented to the Committee an estimated 1975-77 budget of \$99,494 to provide for the coordination of some of the agencies presently included in the project in the manner as provided for in Section 54-40-09. Of this amount, \$59,696 would be available from the Federal Government.

The Committee expressed support for the establishment of a human service center under Section 54-40-09 of the North Dakota Century Code in Region 3. The Chairman of the County Commissioners in each county in the Devils Lake area was informed of the Committee's support for the establishment of a human service center in the

Devils Lake area in accordance with Senate Concurrent Resolution No. 4001 as passed by the Forty-third Legislative Assembly to encourage departments on the regional and local level to cooperate in the delivery of human services. Also, the Committee recommends that if a comprehensive mental health center is going to be established in that region, it be included in the proposed human service center.

COMMITTEE RECOMMENDATIONS

The Committee recommends a concurrent resolution encouraging the comprehensive mental health and retardation centers and area social service centers to further their efforts to cooperate and consolidate the delivery of human services during the 1975-77 biennium. In addition, the Committee recommends a concurrent resolution directing the Legislative Council to conduct a study during the next biennium to determine the advisability of further reorganization of human service-related agencies on the state level.

UNIVERSITY OF NORTH DAKOTA MEDICAL SCHOOL

At each meeting of the Committee on Medical Education and Government Administration, progress reports regarding the establishment of a four-year Medical School in North Dakota were heard by the Committee. At the last meeting of the Committee, it was reported that 68 students are currently enrolled in the first year of the program this year. The 2-1-1 program which was approved by the Forty-third Legislative Assembly calls for students to spend their first two years of medical education at the University in Grand Forks, the third year provides for 35 students to attend the University of Minnesota Medical School, and 5 students to attend the Mayo Clinic Medical School, with the remaining students finding positions outside of the 2-1-1 plan in other Medical Schools throughout the country. At the October 17, 1973, meeting, the Committee by motion approved contracts between the North Dakota Board of Higher Education and the University of Minnesota Medical School and the Mayo Clinic Medical School to implement the 2-1-1 plan and authorized the Chairman of the Committee on Medical Education and Government Administration to sign the contracts to fulfill the provisions of Chapter 164 of the 1973 Session Laws, that called for Committee approval of the contracts. The contract with the University of Minnesota provides the following:

1. The University of Minnesota agrees to provide training in its third year program in its Medical School, Twin Cities Campus, for students of the University of North Dakota Medical School. The number of students which the University of Minnesota agrees to

accept in any given year, and upon which this agreement is predicated, is 35. Any expansion or contraction of this number will be by mutual agreement.

2. The University of Minnesota agrees that any University of North Dakota Medical School student taking training in its third year medical school program on the Twin Cities Campus may continue his third year training so long as the student maintains the status of a student in good standing according to rules and regulations established for all third year students by the University of Minnesota.
3. North Dakota agrees to pay the University of Minnesota the annual sum of \$11,500 per student for the academic year 1974-75 on a base of 35 students, plus assessments for incidental fees for each enrolled student. Payments shall be made pro-rata at the commencement of each academic quarter. It is understood that once a student has been accepted for training by the University of Minnesota, payment will be made by North Dakota regardless of whether the student completes the year of training.
4. For the academic years commencing 1975-76, the annual sum for 35 students shall be adjusted, based upon the University of Minnesota cost per student for the appropriate academic year. The annual costs shall be determined biennially by the University of Minnesota and North Dakota will be notified by the University of Minnesota of the annual costs and the per-student cost breakdown for such class on the anniversary date of this Agreement.
5. The University of Minnesota agrees not to charge any student covered by this Agreement any other tuition as a condition to receiving third-year medical training.
6. Housing for students accepting third-year medical training at the University of Minnesota and other personal expenses associated with attendance will be the student's responsibility.
7. Any student financial aids shall be the sole responsibility of North Dakota.
8. The University of Minnesota will not accept any student participating in the program provided by this Agreement for fourth year medical training at the University of Minnesota.
9. This Agreement shall be effective with the 1974-75 academic year and shall be renewed annually thereafter, provided that after the 1975-76 school year each party reserves the

right to terminate this Agreement by giving to the other party written notice of the desire to terminate the Agreement, but any such termination shall not terminate this Agreement or affect the obligations of either party with respect to any students enrolled in the University of North Dakota Medical School prior to the effective date of such notice or the University of North Dakota's next entering class if committed at the date of the notice.

10. It is understood and agreed that the obligations of both parties to this Agreement shall at all times be conditioned upon the appropriation by the Legislatures of both states of sufficient funds to enable each of the parties hereto to provide the services and make the payments in compliance with this agreement.
11. The implementation of this Agreement is contingent upon the development of a supplementing agreement on the educational policy and other academic considerations governing the administration of the Agreement.

The agreement with the Mayo Foundation provides as follows:

1. The party of the second part (the Mayo Foundation) agrees to provide one year of training for five students who have completed their second year at the University of North Dakota Medical School. Any expansion or contraction of this number will be by mutual agreement.
2. The party of the second part agrees to permit any University of North Dakota Medical School student taking his or her third year training at Mayo Medical School to continue in this training for up to 12 months and so long as the student maintains the status of a student in good standing according to rules and regulations established for all students by the party of the second part.
3. The party of the first part agrees to pay the party of the second part an annual sum per student which for the 1974-75 academic year will be \$11,600. This annual sum per student is based on the following formula:
 - a. An amount equal to the current federal capitation, but not less than \$1,600;

- b. An amount equal to the current Minnesota capitation, but not less than \$8,000;
- c. The current Minnesota resident tuition.

The total fees for each academic year are due and payable one-half on September 1 and one-half on March 1, provided that in the event a student terminates while in attendance, one-half of the total fee is payable if termination occurs in the first one-half of the academic year and the total fee is payable if termination occurs in the second one-half of the year.

4. For the years following 1974-75, the cost per student for each class entering as freshman in the University of North Dakota Medical School will be determined annually and the party of the first part will be notified by the party of the second part of the per-student cost for such class on the anniversary date of this agreement.
5. The party of the second part agrees not to charge any student covered by this Agreement any other tuition or fees as a condition to receiving third year medical training.
6. The obligation of party of the first part shall at all times be conditioned upon the appropriation by the Legislature of sufficient funds to enable such party to comply with its agreement as herein set forth and the obligation of the party of the second part shall at all times be conditioned upon available funds to enable such party to comply with its agreement as herein set forth.
7. Housing for students accepting third year medical training at Mayo will be the students' responsibility.
8. Student financial aid will not be the responsibility of party of the second part and any student financial aid given will be the responsibility of the party of the first part.
9. Party of the second part will not take any student included within this Agreement for the fourth curricular year of medical training.
10. This Agreement shall be continuous, including future amendments, if any, until intention of termination is given by written notice by one of the parties to the other, provided that each party reserves the right to terminate this Agreement by giving to the other party notice of the desire to terminate the Agreement but any such termination shall not take effect until after performance under this Agreement has been completed for all medical school classes enrolled at the

University of North Dakota Medical School at the date of notice or the next year's entering class at the University of North Dakota Medical School if such class is committed at the date of notice.

At the March 29, 1974, Committee meeting, University officials reported that the four-year program had received the necessary accreditation status to obtain approximately \$2 million in federal funds. The accreditation was on a provisional basis; however, the Committee was advised that for the purposes of the school program, full accreditation is but a formality once provisional accreditation has been received.

At the present time the first class of students is enrolled at the University of Minnesota School and the Mayo Clinic Medical School in Minnesota. Thirty-five students are enrolled at the University of Minnesota and five students are enrolled at the Mayo Clinic Medical School. In the fall of 1975, these medical students are scheduled to come back to North Dakota for their final year under their 2-1-1 program. For their last year these students will be divided among the four area health education centers in the elective programs which might be at one of the four AHEC's centers being established in Grand Forks, Fargo, Bismarck, and Minot.

Medical School officials reported at the last Committee meeting that the budget request for the next biennium includes contract money for only 40 students, the Medical School has a strong concern; however, for the other 23 students who must "free" transfer to other medical schools. Two students from the 1974 sophomore class have as yet not transferred, and there is indication that transfer difficulties will intensify in the coming years. Thus, Medical School officials suggest that the Legislature consider entering into contracts with other states for these students also.

The proposed budget for the Medical School for the 1975-77 biennium is \$9,053,653, with \$6,617,346 of this amount to come from the state general fund. The 1973-75 appropriation of all funds for the Medical School is \$4,090,558, with \$1,252,064 of this amount coming from the state general fund. The significant increase in the budget for the next biennium over the present biennium is the additional amount of funds necessary for residency programs. The total cost of the residency program is \$2,771,000, with \$1,475,000 of this amount anticipated from private and other sources and \$1,296,000 from the state general fund.

In regard to residency programs, the request for \$2,771,000 is for programs in primary care which includes family medicine, medicine, and pediatrics. This amount is presented in the budget request upon

the advice of the state AHEC committee. It is the belief of the Medical School that \$1,475,000 will be available from sources external to the legislative appropriation. Consequently, only \$1,296,000 of this amount is requested from the state general fund. To improve the level of communications between the Medical School and the communities providing for medical students in their AHECs centers, the Committee recommends that the directors of the AHECs centers in Minot, Bismarck, Fargo, and Grand Forks be ex officio members of the Medical Center Advisory Council. The Committee proposal would expand the membership on the Council from the present seven to 11 members to accommodate the AHEC center directors.

On June 20, 1973, the Committee met with a subcommittee of Legislators representing the South Dakota Legislative Research Council to discuss the possibility of interstate cooperation in establishing a four-year Medical School program. Since North Dakota had already committed itself to a program with Minnesota, only areas such as faculty exchanges, sharing of residencies, and closed-circuit television instruction seemed to be possible areas for future cooperation.

VETERINARIANS

At the request of the Chairman of the Legislative Council, the Committee reviewed the status of veterinary manpower in North Dakota, and the opportunity to expand the number of contracts which the State has with out-of-state schools of veterinary medicine for students desiring an education in veterinary medicine. The Committee was advised of the difficulty that students interested in a veterinary medicine program have in being admitted to out-of-state schools of veterinary medicine. These students gained admission under the agreements which the State Board of Higher Education has entered into with veterinary medicine schools in other states. Section 15-10-28 of the North Dakota Century Code authorizes the Board of Higher Education to enter into agreements with institutions of higher learning in other states to make expenditures necessary for the purpose of utilizing educational facilities of such institutions for teaching North Dakota students those courses that are not offered by institutions of higher education in this State. Section 15-10-28.1 of the North Dakota Century Code provides that in regard to payments made on behalf of veterinary medicine and surgery students from the appropriations for reciprocal agreements entered into under Section 15-10-28, the Board of Higher Education shall obtain a note signed by each student in the amount equal to the difference between the resident and nonresident tuition at the institution attended by such student. The law further provides that such note shall be so conditioned as to be void if such student shall, upon

graduation, return to North Dakota and engage in the practice of veterinary medicine and surgery for a period of at least two years.

Dr. Myron Andrews, the Chairman of the Veterinary Science Department, North Dakota State University, pointed out that during the two years prior to the 1974-75 school year when 10 students found positions, five North Dakota residents gained admission to veterinary schools each year. Without contracts, he reported that it is possible that no North Dakota resident would find admission to veterinary schools possible. Dr. Andrews supported by Dr. Dean Flagg, the State Veterinarian, said that additional veterinarians are needed in North Dakota for the following reasons:

1. Agriculture is having a difficult time bidding for veterinarians in competition with small animal practice and other lucrative fields.
2. North Dakota is especially short of veterinarians. There is more valuation of agricultural animals in North Dakota per veterinarian than in any other state. There is also more area to cover per veterinarian than any other state except four. If the area of the state were adjusted to exclude nonagricultural land, North Dakota would probably be in the top 48 contiguous states in this category.
3. It has been estimated that on the average every dollar spent on veterinary service and agriculture returns seven dollars to the livestock owner.
4. North Dakota is falling behind in its share of the national pool of veterinarians. From 1968 to 1974, North Dakota increased the number of veterinarians by 22.8 per cent while at the same time the national pool of veterinarians increased by 25.9 per cent.

A study conducted by the North Dakota State Department of Health, Division of Health Planning, entitled "Veterinary Manpower in North Dakota", dated June, 1974, supports the need for additional veterinarians over the 99 presently active in the State. The report states that available manpower data indicates that of the States of Nebraska, Wisconsin, South Dakota, North Dakota, Iowa, and Minnesota, North Dakota has the fewest veterinarians for its human population of the six states. It was also pointed out that from available manpower data, the above six states rank well below the national average in the number of doctors of veterinary medicine per 100,000 farm animals, with North Dakota ranking next to last. North Dakota has a rabies-in-cattle rate over twice the national average, and the hog death rate is above the national average and the highest of the six states, the report

said. In addition to the shortage of veterinarians, the report points out the maldistribution of veterinarians within the state.

The North Dakota State Health Department indicates that it is virtually impossible for an applicant to gain admission to a veterinary school unless his state has a contract agreement with the school to which he is applying. It was reported, however, that 10 state residents will be among the freshman this fall in schools of veterinary medicine, five in Oklahoma, three in Iowa, and two in Minnesota. The report also states that the state veterinarian's office has studied the situation and concluded that 21 more doctors of veterinary medicine are needed in North Dakota at the present time. The report concludes by stating that North Dakota does stand behind many other states in animal health and veterinary manpower and may fall further behind in the future.

It is the recommendation of the Committee that the Board of Higher Education request funds from the Legislature sufficient to contract for 49 positions in out-of-state schools of veterinary medicine during the next biennium. The total of 49 students includes 24 students that are presently enrolled, 12 additional students during the 1975-76 school year, and an increase of 13 students during the 1976-77 school year. The estimated cost to the State under this program would be approximately \$660,000. There were 32 known applicants for the 10 openings for the 1974-75 school year. Representatives of the Board of Higher Education stated that it is their opinion that unless the Legislative Assembly approves contracts for these additional spaces, they will be lost to the other 31 states not having colleges of veterinary medicine. The cost per student per year at the various out-of-state schools of veterinary medicine ranges from \$4,000 to \$9,753 per student. It was reported that the states which have given indication that 49 openings would be available during the next biennium have agreed to hold such positions open until after the Legislature has had an opportunity to take action in regard to the proposal. Dr. Dean Flagg, State Veterinarian, reported to the Committee that until such time as a regional college of veterinary science is established in this area, he recommends that the Committee proceed to make arrangements for the 49 students per year as recommended by the Board of Higher Education.

DENTISTRY

The Chairman of the Legislative Council asked the Committee to devote some time and attention to the problem of the growing shortage of practicing dentists and the problems that may be occurring since North Dakota does not have a formalized dental education program. The State Health

Department, Division of Planning, presented a report to the Committee on Dental Education and the shortage of dentists in North Dakota. The report indicates 234 actively practicing dentists in the State. The median age of dentists is 47.35 years with 48 of these dentists out of a sampling of 225 being 60 years of age or older. The report states that the national average for the number of dentists per 100,000 people is 60.6 while in North Dakota there are 42.6 practicing dentists per 100,000 population. North Dakota's percentage according to the report is 30 percent less than the national average and 40 percent less than the 70.8 percent per 100,000 in Minnesota. The report also states that North Dakota is one of 19 states without a dental school. It is one of five states that does not have an agreement with another state for its students to receive a dental education in out-of-state dental schools. Even though an out-of-state student may be highly qualified, the report indicates that his chances of being admitted to a dental school are about 1 in 20 unless his state has an agreement with the dental school to which he is applying. The report also states that the percentage of first year dental school enrollees from North Dakota versus applicants was as follows:

1966	20 percent
1967	31 percent
1968	46 percent
1969	36 percent
1970	30 percent
1971	22 percent
1972	18.5 percent

The report states that at the present time there are five first year dental students from North Dakota enrolled in out-of-state schools with a total of 28 North Dakota students in pre-doctoral status pursuing their dental degrees. These students are distributed throughout the various dental schools as follows: Northwestern University, 8; University of Minnesota, 14; Creighton University, 3; University of Louisville, 7; Washington University, 7; and University of Nebraska, 7.

Representatives of the North Dakota Dental Association reported that North Dakota has the least number of students accepted in dental schools of all of the states in the union except for Alaska. Other states they report have entered into contracts to help their students receive a dental education. Representatives of the Association went on to report that with the tremendous number of applicants to dental schools in the country, Creighton, for example, had 1,500 applicants for a class of 65 freshmen, it is going to be increasingly difficult to enroll students in out-of-state dental schools. Our people are being shut out. They reported that only the benevolence of Minnesota gives our students interested in dentistry the opportunity they do have, to attend dental schools.

The Committee also reviewed the licensure requirements of persons desiring to practice dentistry in North Dakota. At the present time a license by examination is required of anyone with less than three years of practice. In the event that one has more than three years of experience and is qualified in other respects, one may be licensed by criteria approval. This involves receiving a license by proving to the Board of Dental Examiners that a candidate has completed an examination in another state which includes those items required by the North Dakota Dental Practice Act. Since the candidate is not to be examined on his competency, but licensed solely on his credentials, a 60-day waiting period is required to allow sufficient time for a thorough investigation. The Committee had expressed concern about the waiting period for credential licensure since at the first meeting the requirement was five years rather than the three years which has been changed since that meeting of the Committee. Representatives of the State Dental Board also pointed out that North Dakota recognizes the central regional dental testing service which issues examinations which when passed make it possible for a great number of dentists to become licensed in North Dakota by the Board's acceptance of the examination given by them. In the past two and one-half years, this regional board has examined 2,000 dentists. These 2,000 dentists are now eligible to receive licensure in North Dakota without any further examination simply by completing the application form and meeting other requirements listed previously. The Committee took no action in regard to the licensure requirements of the State Board of Dental Examiners.

In an effort to reduce the shortage of dentists in North Dakota, the Committee recommends that the Board of Higher Education enter into a reciprocal agreement program with other states for the education of students interested in and pursuing an education in dentistry. The recommendation encourages the Board of Higher Education to enter into contracts with out-of-state institutions of dental education for 20 dental students during each year of the next biennium. This is four less per year than recommended by the Board of Higher Education. The Committee recommends a bill providing that at the time the payments are made to or on behalf of a dentistry student from appropriations from reciprocal agreement, the Board of Higher Education shall obtain a note signed by each student in an amount equal to the difference between the resident and nonresident tuition at the institution attended by the student. It also provides such notes shall be so conditioned that it is to be void if the student shall, upon graduation, return to North Dakota and engage in the practice of dentistry for at least two years. The Board of Higher Education may temporarily waive the requirement of the note during the time the student is pursuing advanced study in

dentistry or during the time the student is in the military service of the United States.

The Board of Higher Education indicates that commitments have been made by other states to keep positions open for the 20 students until the Legislative Assembly has an opportunity to act upon the appropriation requests to fund the contracts. The cost per student per contract ranges from \$4,000 to \$8,439 per student per year, and the total cost of the program could be as high as \$333,000 during the next biennium.

OPTOMETRY

At the request of the Chairman of the Legislative Council, the Committee reviewed the shortage of optometric services in North Dakota. In a report from the Division of Health and Planning of the North Dakota State Health Department, entitled "Optometric Education and Shortage of Optometrists in North Dakota", it is reported that the ratio of optometrists to the general population in North Dakota is 12 per 100,000 and is above the national average. The report goes on further to state, however, that the actual distribution among the counties in the State indicates that 24 counties are optimal, 5 counties are above average, 1 county is below average and 23 counties have no optometric services. If the need for optometrists in North Dakota is to be based upon the national recognized optimum level, of 14 optometrists per 100,000 population or 1 optometrist per 7,143 of general population, according to the report North Dakota needs 83.33 active optometrists or an increase of 11 over the present 72 practicing optometrists. The report also indicates that although North Dakota appears to be nearing the optimal level of optometric care, 23 counties without such service certainly indicates the disparity of the distribution of optometric services. The report concludes by stating that the real problems of availability and accessibility to optometric services can only be solved by devising a delivery system for optometric services that can more equitably serve the rural population.

Dr. Harlan Geiger, President of the North Dakota Optometric Association, asked on behalf of that organization that the Committee consider compact arrangements for students desiring to enroll in out-of-state schools of optometry. In a report presented to the Committee by Dr. Geiger, the following information regarding optometric services in North Dakota at the present time was presented:

In the State of North Dakota, 96 per cent of the optometrists are actively engaged in patient care, teaching, research, and administration. Of the total number of optometrists in the State, 95 per cent are in patient care.

Ward County has the largest number of active optometrists in a single county in North Dakota: 9 optometrists, or 13 per cent of all of those in the State.

Thirty per cent of the active optometrists are under 40 years of age; 62 per cent are between 40 and 59 years; and 8 per cent are 60 years or older.

The school graduating the largest number of active optometrists in the state is North Illinois College of Optometry.

Of the active optometrists, 90 per cent are working 30 or more hours per week.

In the State of North Dakota, 86 per cent of the active optometrists are self-employed, with 63 per cent in solo practice. Of the employed optometrists, the greatest number are employed by professional corporations.

Eighty-nine per cent of the practicing optometrists report they employ supplemental personnel to assist them.

Of the practicing optometrists reporting a specialty, the greatest number reported contact lenses.

The North Dakota Optometric Association reported that the State of Minnesota plans to establish a School of Optometry. Should this school be established, the North Dakota Optometric Association urges that the State of North Dakota agree to pay for the cost of North Dakota students desiring to attend the Minnesota School of Optometry.

The Board of Higher Education recommends that the State enter into contracts for 18 students to attend out-of-state schools of optometry during the 1975-77 biennium at a cost of \$144,000. The above projections are based upon the need of 9 new optometrists per year. It was reported that the Board of Higher Education has contacted out-of-state schools of optometry and that the positions will be held open until the Legislature has had time to approve the proposed contractual program.

The Committee recommends that the Board of Higher Education proceeds to seek approval from the Legislature to enter into reciprocal agreements for 10 optometrists during the next biennium. The cost of this proposal is estimated at \$104,000. The Committee also recommends a bill providing that at the time the payments are made to or on behalf of an optometric student from the appropriation for reciprocal agreements, the Board of Higher Education shall obtain a note signed by such student in the amount equal to the difference between the

resident and nonresident tuition at the institution attended by the student. Such note shall be so conditioned as to be void if such student shall, upon graduation, return to North Dakota and engage in the practice of optometry for at least two years. The Board of Higher Education may temporarily waive the repayment of the note during the time the student is pursuing an advance course in optometry or during the time the student is in the military service of the United States of America.

VOCATIONAL REHABILITATION

In its 1973 report to the Legislative Assembly, the Legislative Council recommended the transfer of the Division of Vocational Rehabilitation from the Board of Public School Education to the State Social Service Board. In order to prepare for the transfer, the State Social Service Board contracted with Touche Ross & Co. for recommendations on how the Board might develop the most effective framework for the orderly and efficient combination of these two departments. The firm of Touche Ross & Co. presented a report to the Committee at its October 17, 1973, meeting. It indicated there are significant benefits to be gained from the transfer, but only if the transfer is integrated fully with service delivery at local levels. The consultants stated that their study was based upon the presumption that the Legislature wants results from the transfer. It was indicated that the interaction between vocational rehabilitation and social services will be the greatest at the county level; and that there is where the report recommends the greatest merger of services. It was pointed out that there are not many areas of possible combination of activities on the state level. The firm's recommendation for the immediate future was for one executive director to report to the Social Service Board, and to be responsible for the overall administration of all Board programs, including public assistance, medical services, social services, and vocational rehabilitation. The director of the division of vocational rehabilitation will be responsible to the board through the executive director, as directed by the board. Other recommendations include consolidating the support of functions for vocational rehabilitation, such as personnel, staff development, accounting, and statistics, with appropriate units within the existing board organizations; continuation of the reporting of regional administrators of all board programs directly to their program director; a special assistant to the executive director to handle special projects, including the implementation of the Touche Ross report; realignment of the organization position of the board's director of program planning and coordination; and the providing of legal counsel to the vocational rehabilitation by board's counsel.

The consultants emphasized that the first recommendation, that of just one executive director,

was the key to all other recommendations and plans. It was pointed out that when the firm had looked at the legislative mandate to clearly accomplish something effective with the transfer, it was determined that there was no way that this could be accomplished with two executive directors reporting to the board. It was pointed out by the consultants after looking at other states with similar organization setups, that none had two executive directors. No recommendations were made for immediate coordination of vocational rehabilitation and social services on the local level until further information is available about the functions of the two activities. Much can be accomplished, it was reported, if the executive director and the director of vocational rehabilitation and of social services can get together and set some guidelines for their people on the local level. In regard to the future, the firm suggests new positions of regional directors of human services reporting directly to the director of field operations. These men it was reported would be responsible for the delivery of all human service programs. The program directors in the individual areas, such as vocational rehabilitation and social services, would continue to be responsible for program policy and direction, but day to day field administration would become the responsibility of the director of field operations acting through the regional directors. Since the report was presented for informational purposes, the Committee took no action in regard to the report from the Touche Ross firm. At the last meeting, the Committee recommended a concurrent resolution directing the Legislative Council to study the results of the Division of Vocational Rehabilitation transfer to the Social Service Board. Included in this same concurrent resolution is the direction to conduct a study to determine the advisability of further reorganization of human service-related agencies on the state level.

OFF-RESERVATION INDIAN HEALTH

At the June 20, 1973, meeting of the Committee, Committee members by motion asked for information regarding off-reservation Indian health needs in North Dakota. In response, the Division of Health Planning of the North Dakota State Department of Health reported to the Committee at each meeting the progress being made on a study being conducted for the Division on off-reservation Indian health needs in North Dakota. At the last Committee meeting, Dr. Robert Sullivan presented information contained in that study. Although his report was close to completion, it had not been presented for final approval to the State Health Planning Advisory Council. Dr. Sullivan reported that of the 16,000 to 18,000 Indians in North Dakota, 3,900 are living off the reservation. Of this number, approximately 2,000 are in need of a special health care program. The other 2,900 are covered

under a medical program such as an insurance program provided by an employer or a student health program at an institution of higher education. It was reported that those in the 2,000 population target group earn incomes of from \$4,000 to \$8,500 per year and are living in areas including the following: Williston-Trenton area, 585; Bismarck, 265; Fargo, 175; Grand Forks, 235; and Minot, 200. Dr. Sullivan supported a Blue Cross-Blue Shield approach to providing medical services to off-reservation Indians and indicated that the cost of a total medical and hospital program would be approximately \$725,000 per year. This would not include dental coverage. He suggested that an average contribution from the patient of about six percent with no one paying more than \$10 per month should be required. It was reported that no federal money at the present time is available for this type of a program. Eligibility requirements suggested, should the Legislature consider implementing such a program, could be as follows:

1. The person must be an enrolled member of a tribe.
2. The person must be a permanent resident having been at the location for at least six months and either employed or seeking employment.
3. The person must have no obvious source of care.
4. The person must be earning no more than \$5,000 per year if single or from \$6,000 to \$9,200 per year depending upon the number of children in the family.

Since the State Health Planning Advisory Council has not had an opportunity to take action on Dr. Sullivan's report, the Committee does not make a recommendation regarding this report to the Forty-fourth Legislative Assembly.

NATURAL RESOURCES "A"

The Committee on Natural Resources "A" was assigned three study resolutions. Senate Concurrent Resolution No. 4030 directed a study to be conducted to determine the feasibility and desirability of regulating clay, sand, and gravel pit and other land disturbing activities; Senate Concurrent Resolution No. 4006 directed a study to be conducted to determine if control is needed over the location and construction of power transmission lines; and Senate Concurrent Resolution No. 4005 directed a study of land use planning and zoning at state, regional, and local levels. In addition to the studies directed by resolution, the Committee was authorized by the Chairman of the Legislative Council, as the result of a recommendation made by the Committee on Resources Development, to specifically consider the land use planning aspects of coal gasification.

The members of the Committee on Natural Resources "A" were Senators L.D. Christensen, Chairman, Stella Fritzell, J. Garvin Jacobson, Kenneth L. Morgan, George Rait, Leland Roen, Robert L. Stroup, and Stanley Wright; and Representatives Myron Atkinson, Lawrence Dick, Ralph Hickle, Gordon Matheny, Wilbur Vander Vorst, and Ralph M. Winge.

The report of the Committee on Natural Resources "A" was submitted to the Legislative Council at the biennial meeting of the Council held at Bismarck. The report and recommended legislation were adopted for submission to the Forty-fourth Legislative Assembly by the Legislative Council in November 1974.

LAND DISTURBING ACTIVITY STUDY

The amount of land disturbed by clay, sand, and gravel pit operations in North Dakota is difficult to ascertain, with one reported estimate at 26,000 acres. However, information from the State Highway Department indicates that 4,673 gravel pit operations are on file with the department, with a potential for disturbance of 40,866 acres. This amounts to substantial area of land being disturbed with no required reclamation, in contrast to the smaller amount of acreage disturbed by coal mining operations and subject to the reclamation requirements of Chapter 38-14. The difficulty in subjecting clay, sand, and gravel pit operations to coal mine reclamation provisions lies in the substantial differences in the nature and effect of coal mining operations with respect to other land disturbing activities. While coal mining operations disturb large amounts of land per operation through deep surface mining methods, clay, sand, and gravel pit operations involve small, scattered tracts of land

with minimal depth disturbance. The typical gravel pit operation described to the Committee was a gravel pit of approximately 30 acres, with a depth not exceeding 20 feet, topsoil overburden of 1.5 feet, and surface disturbance of 2 acres per year. In addition, gravel pits are subject to sporadic operation as the need for the particular aggregate arises, and active pits may be in production for 50 years. Reclamation methods also differ in that in contrast to the non-productive sub-surface material present in coal mining operations, gravel pit operations are generally shallow and productive reclamation may be made by spreading topsoil over the regraded pit area at a cost of \$500-\$600 for each five acres of pit area reclaimed.

The problem arising from such land disturbing operations is the lack of reclamation requirements for activities which disturb a large amount of North Dakota surface area, including a lack of control over voluntary reclamation activities, with the probability that such activities are poorly planned in relation to the best use of the land to provide minimal loss of natural resources.

Attempted Solution

The Committee contacted the Associated General Contractors and the Land Improvement Contractors Association for suggestions on possible regulation of surface mining operations and land disturbing activities. Both organizations expressed no opposition to requiring reclamation of surface mining operations, provided that the requirements did not interfere with their operations. Their suggestions were to provide administration of reclamation requirements at a local level through the soil conservation districts, require only limited information in permit applications, provide flexible reclamation requirements, and allow permits to be issued without extensive waiting periods. In response to these initial suggestions, a bill was prepared for Committee consideration which would have required the reclamation and conservation of land subject to surface mining operations (other than coal mining operations) and land disturbing activities.

The bill would have required persons engaged in surface mining operations or land disturbing activities which, within 36 consecutive months, remove more than 10,000 cubic yards of product or material or affect one acre or more to apply for and receive a permit from the State Soil Conservation Committee. The application would have described the time period for engaging in the operation or activity, land to be affected, and proposed reclamation. Notice of the proposed operation or activity would have been published in the county in

which the operation or activity would take place. Reclamation activities would have been required as soon as possible after mining or disturbing the land and would have included regrading the land to the original contour or a rolling topography unless a higher use of the land was intended, saving and respreading topsoil, reducing soil erosion and water pollution, and planting approved vegetation. No permit could have been issued if reclamation could not be conducted, local zoning ordinances would be violated, or parks would be adversely affected. Provisions were made for permit amendments, administration of reclamation provisions by another government agency if a performance bond is required by that agency, and issuance of a 60-day provisional permit immediately upon receipt of the application. The State Soil Conservation Committee would have been required to rule on the application within 60 days of receipt and would have been empowered to delegate any of its authority to local soil conservation districts. The applicant would have been required to provide a bond in the amount of \$1,000 per acre which would have been forfeited if reclamation was not satisfactorily performed. Progress reports would have been required of persons engaged in surface mining operations or land disturbing activities. An application fee of \$10 per acre to be affected by the surface mining operation or land disturbing activity was to have been submitted with the application and a fee of one cent per cubic yard of mineral mined was to have been submitted with each progress report in order to cover administrative costs.

Committee Action

The Committee rejected the bill after receiving additional testimony from the State Highway Department, the Associated General Contractors, and the Land Improvement Contractors Association. The Committee concluded that the land disturbing activity portion of the bill was very broad in application and would have applied to various types of activities not intended to be regulated, e.g., land subdivision and platting and normal soil conservation practices. In addition, the Committee concluded the fee generating provisions of the bill were inadequate to provide revenue to cover the cost of administering a bill directed to regulating both surface mining operations and land disturbing activities, the 60-day provisional permit provisions were not satisfactory to the contractors who wanted a guarantee of permit issuance, government agencies such as the Highway Department would have been subject to additional reports on their activities even though only abbreviated reclamation is required by those agencies, and the provisions of the bill did nothing towards alleviating the problem of reclaiming the numerous abandoned gravel pits around the State.

Although the Committee rejected the bill to require extensive reclamation of clay, sand, and

gravel pits and other land disturbing activities and is making no recommendation concerning the feasibility of requiring such reclamation, the Committee believes that the possibility of future action should not be foreclosed. Land disturbing activities affect a large number of acres in North Dakota, and the Committee believes that the close scrutiny should be given to the conduct of surface mining operations and land disturbing activities, especially with regard to the control some government agencies exercise over such activities, in order to determine that the State's natural resources are being protected.

TRANSMISSION LINE STUDY

Estimates indicate that 1,800 miles of 230 kilovolt and 1,500 miles of 115 kilovolt transmission line span North Dakota, with additional high voltage transmission line under construction or in the planning stage. The problems arising from location and construction of high voltage transmission line may be classified as environmental and agricultural. Environmental problems include line emissions, noise, and communication signal interference, and agricultural problems include inconvenience to agricultural efficiency through interference with application of chemicals and reduction of production potential through interference with the ability to irrigate land.

Utility Planning

Every electrical utility operating in North Dakota was contacted to provide information on existing planning procedures in locating and constructing power transmission line. The utilities indicated that each transmission line project is planned and researched thoroughly to determine the needs of the area, the needs of the generation and transmission system, anticipated land use, and cost. It was also indicated that utilities engage in joint planning efforts with one another to reduce duplication of systems and waste of resources.

The normal procedure followed by a utility in locating and constructing a transmission line involves the use of maps containing data about possible rights-of-way, selection of a general corridor, and ultimate selection of the specific line route within the general corridor. Factors considered in determining the specific line route include the effects of the route on wildlife refuges, irrigation potential, aquifers, highways, other transmission facilities, historical sites, and farm sites.

Recommendation

The major suggestions for reducing adverse environmental and agricultural impact of transmission line location and construction included underground placement and coordinated use of trans-

mission line corridors. The Committee found that requiring underground placement of high voltage transmission line was not feasible due to the unavailability of advanced technology and the prohibitive cost of underground placement with present technology. However, the Committee found that coordinated use of corridors could result in concentration of transmission line with less overall detriment to the environment and to agriculture. Testimony indicated, however, that any coordinated use of corridors must be based upon careful planning due to the scattered load centers in North Dakota and the effect grouping transmission line would have on overall system reliability.

The Committee believes the present regulatory authority over the location and construction of transmission line is wholly inadequate in that the Public Service Commission only as authority to regulate the location of transmission line so as to avoid interference with communication signal line. Therefore, the Committee recommends a bill to authorize the Public Service Commission to regulate the siting of high voltage transmission line. Because the bill also regulates the siting of energy conversion facilities, which is a portion of the land use planning study conducted by the Committee, a description of the bill is under the plant siting portion of the land use planning study.

LAND USE PLANNING STUDY

The land use planning study, as directed by the study resolution, involved a very broad subject and was divided into four areas for special emphasis — plant siting, local planning and zoning, review and comment authority, and municipal incorporation.

Plant Siting — Recommendation

Under the study resolution, the Committee was directed to consider aspects of power plant siting. To aid in a coordinated study, the Committee combined the transmission line study and the study concerning the land use planning aspects of coal gasification with this portion of the land use planning study.

Although the Public Service Commission was found to have minimal control over the location of electric transmission line, no direct statutory control was found to exist over the siting of power plants or coal gasification plants and their related facilities. An indirect form of control, however, was found to exist in the State Department of Health due to that department's authority to rule out specific plant sites on the basis of environmental considerations. In contrast to this regulatory void in North Dakota, the adjacent States of Minnesota and Montana have acted to regulate the siting of power generation plants and transmission line (Minnesota) and energy conversion plants and related facilities (Montana).

The Committee determined that regulation is needed to control the siting of energy conversion and related transmission facilities to minimize adverse environmental and agricultural effects of poorly planned siting and, in its proposed bill, is recommending:

In Section 1: The name of the Act be the "North Dakota Energy Conversion and Transmission Facility Siting Act".

In Section 2: A statement of policy that the construction of energy conversion facilities and transmission facilities affects the environment and welfare of the citizens of the State and that such facilities should be sited in a manner compatible with environmental preservation and the efficient use of resources.

In Section 3: Definitions. An energy conversion facility is any plant with a cost of over \$250,000 and capable of generation of 50,000 kilowatts or more of electricity, manufacture or refinement of 100,000,000 cubic feet or more of gas per day, manufacture or refinement of 50,000 barrels or more of liquid hydrocarbon products per day, or enrichment of uranium minerals. A transmission facility is an electric transmission line with a design of 200 kilovolts or more, an electric transmission line with a design of 69 to 200 kilovolts if it does not follow certain property lines or rights-of-way, or a gas or liquid transmission line transporting products to or from an energy conversion facility.

The Committee determined that coverage of a plant siting Act should be similar to siting Acts of states within which most utilities in North Dakota operate. Therefore, the basic definitions of energy conversion plants and facilities were taken from the Minnesota and Montana Utility Siting Acts; however, the Committee concluded that for initial application of the siting Act, coverage should not be so broad so as to include the extensive low voltage transmission line network. The Committee determined that all electric transmission lines of over 200 kilovolts should be subject to the siting requirements of the Act and that electric transmission lines of from 69 to 200 kilovolts should be subject to the siting requirements of the Act only if such lines substantially interfere with agricultural operations. The Committee concluded that lines of less than 69 kilovolt capacity should not be subject to the initial coverage of the Act for such lines normally follow section lines.

In Section 4: That every utility shall annually submit a 10-year plan to the Public Service Commission describing its activities for the next 10 years relating to facility operation and coordination of planning efforts with other utilities, environmental protection agencies, and land use planning agencies and estimating the projected future demand for its services.

The Committee believes that the Public Service Commission should administer the provisions of any siting Act directed to regulate utilities and utility-type industries. Although serious consideration was given to the probable duplication of activities of the Public Service Commission and the State Department of Health in evaluating environmental considerations of proposed facilities, the Committee concluded the present economic regulatory authority the Public Service Commission exercises over utilities was of primary importance.

In Section 5: That the Public Service Commission conduct public hearings to develop criteria and standards to establish an inventory of potential energy conversion facility sites and transmission facility corridors by July 1, 1976.

In Section 6: That after the establishment of an inventory of potential sites and corridors, every utility shall annually submit five-year plans for facilities to meet projected future demands for service.

In Section 7: That no utility can begin construction of a facility or exercise the right of eminent domain without obtaining a certificate of site compatibility from the Public Service Commission.

In Section 8: That the application shall describe the type of facility proposed, summarize studies of environmental impact, explain the need for the facility identify the preferred site or corridor and at least one alternate site or corridor, and describe the merits and demerits of each proposed location. A copy of the application is to be served on the board of county commissioners of each county and the chief executive officer of each city to be affected by the proposed facility.

In Section 9: That the Public Service Commission is to evaluate the proposed site or corridor by considering the effects on land, air, water, and human resources, effects on the environment, irreversible commitments of resources, economic impact, and effects on scenic, historic, archaeological, or biological areas.

In Section 10: That designation of sites and corridors shall be made after study, evaluation, and hearings either from the inventory or from sites or corridors designated by the utilities. The designation is to be made within one year for a site and within six months for a corridor, with provision for a six-month extension for good cause.

In Section 11: That within two years after designation of a corridor, the utility shall apply for a permit to construct the transmission facility on a specific route within the corridor, and the permit is to be issued following study, evaluation, and

hearings similar to those held for the original designation of the corridor.

In Section 12: That the Public Service Commission is to hold an annual public hearing regarding its inventory, and that one public hearing shall be held in each county where a site or corridor is being considered for designation.

In Section 13: That one or more advisory committees may be appointed to assist the Public Service Commission in evaluating sites or corridors considered for designation, with a majority of public representatives, three representatives from utilities, and a representative from each county and city in which a facility is proposed to be located.

In Section 14: That a principle of operation is broad citizen participation and that all meetings and hearings of the Public Service Commission are open to the public.

In Section 15: That a certificate of site compatibility or transmission facility permit is the only site approval required to be obtained by the utility, but the certificate does not preempt any county or city land use, zoning, or building regulations. Permits required for construction and operation of facilities would still be required to be obtained by the utility but the issuing agency would be bound by the siting decision of the Public Service Commission. To reduce the potential for conflicts, the issuing agency would be required to present its position on the proposed site, corridor, or route location to the Public Service Commission and the commission could not designate a site which violates any state agency regulations.

In Section 16: That if no construction or improvement is started on a designated site or route within four years after designation, the utility must certify to the Public Service Commission that the site or route continues to meet the conditions under which the certificate or permit was issued.

In Section 17: That the Public Service Commission shall adopt rules and regulations to administer the Act under the procedures of the State Administrative Agencies Practice Act.

In Section 18: That any person aggrieved by issuance of a certificate or permit may request a hearing by the Commission, with a right of appeal to district court.

In Section 19: That a certificate or permit may be revoked or suspended for material false statements in the application, failure to comply with the certificate or permit, or violation of the provisions of the Act or rules or regulations of the Commission.

In Section 20: That the penalty for violating the Act by beginning construction without a certificate or permit is a class A misdemeanor, with a civil penalty of \$10,000, and that any willful violation of any regulation of the commission is a class A misdemeanor.

In Section 21: That an application fee of \$500 for each million dollars of investment in the proposed facility is to accompany the application for a certificate of site compatibility. An additional fee of up to \$500 for each million dollars of investment is allowed to be charged by the commission to complete the site, corridor, or route evaluation and selection process. A minimum fee of \$5,000 is required for the issuance of a certificate, and all fees are to be deposited in a special fund to be used to administer the Act.

Witnesses appeared before the Committee and urged that any siting fee be in an amount to cover administrative costs only and not raise surplus revenue. The intent of the Committee in establishing a siting fee is that the cost of administering the Siting Act should be borne by the parties responsible for constructing facilities which require site evaluation. The Committee believes that the siting fee as provided in the Act is adequate to cover the cost of evaluating and selecting a site, corridor, or route. The fee is basically the same as the fee required under the Minnesota Power Plant Siting Act, but is substantially less than the fee schedule provided under the Montana Utility Siting Act.

In Section 22: That an appropriation in the amount of \$805,000 from the special fund containing the estimated revenue from siting fees and \$190,000 from the general fund be made for the purpose of administering the Act to June 30, 1977.

In Section 23: That after a balance of \$100,000 is available in the special fund from the receipt of siting fees, a transfer be made to the general fund at the end of every biennial fiscal period thereafter until the original fund appropriation is repaid to the general fund.

The Committee's intent in establishing a siting fee is to fully cover the cost of administering the Siting Act. However, a general fund appropriation is needed to start the initial inventory process required by the Act. After an amount has been accumulated in the special fund to provide for administration during periods where no applications and siting fees are received, any excess revenue from the siting fees would be used to repay the initial general fund appropriation.

In Section 24: That the Act is declared an emergency to go into effect immediately upon passage and approval.

The Committee believes that immediate consideration should be given to the bill due to the substantial environmental and agricultural impact from the imminent construction of energy conversion and transmission facilities. Substantial concern was expressed regarding construction of facilities prior to the effective date of siting legislation and a resolution was passed by the Committee (which was sent to every utility in the State) urging power generation and transmission concerns to coordinate all siting of transmission facilities through the Public Service Commission during the interim period before legislative action could be taken and urging the Public Service Commission to give the greatest possible consideration to the impact power transmission facility siting has on land use.

Local Planning and Zoning — Recommendations

The primary emphasis on land use planning in North Dakota is at the county and city level of government. Land use planning is the carefully planned development of land, water, and resources of a given area, but it is just that — a plan. The methods of implementing a land use plan vary, but the most common are zoning, subdivision control, and building codes.

The Committee studied proposed federal legislation and land use planning statutes existing or being proposed in other states for the purpose of obtaining knowledge of methods which could be utilized in improving the land use planning process in North Dakota. The primary federal legislation was S. 268 which passed the Senate in June 1973 but was defeated in the House in June 1974. Under the proposed federal legislation, states would have received annual grants to develop and implement a comprehensive land use planning process. To be eligible for the grants, a state would have had to inventory land resources, population density trends, economic characteristics, environmental trends, directions of urban and rural growth, and land needs and then develop a program to control areas of critical environmental concern, use of land impacted by key facilities, and developments of more than local environmental significance. The program would have had to have been implemented through local control with state approval or through direct state planning and regulation.

Of significance to the study was what other states have done or are planning to do with respect to land use planning. State action ranged from revision of existing planning and zoning procedures (as proposed in Georgia) to establishment of a comprehensive land use planning scheme (as accomplished in Florida and proposed in Washington). Of special interest to the Committee was the statutory set up in Minnesota, which includes separate Acts directed towards various aspects of

land use planning, e.g., critical areas, municipal planning and zoning, and power plant siting.

The Committee determined that the best approach to the study was to start with the existing planning authority in North Dakota and revise that authority with the view towards modernization of land use planning procedures and processes. Ambiguity presently exists in the primary land use planning and zoning statutes in North Dakota because only cities, and to some extent counties, have planning authority, while counties, cities, and townships all have zoning authority.

The Committee is recommending three bills with respect to land use planning and zoning authority. The Committee wishes to emphasize that the bills recommended for revision of city planning and zoning, county planning and zoning, and joint planning commission authority are interrelated with one another and with certain provisions of the bill recommended by the Committee to establish review and comment authority in the State Planning Division. Therefore, changes in any of the four bills should be coordinated with changes in the remaining bills so that the overall coordination and relationship of the four bills is not destroyed.

The Committee, in its proposed bill to revise city planning and zoning authority, is recommending:

In Section 1: A statement of policy that city planning guides future action so that land is developed to serve citizens effectively.

In Section 2: That capital improvement programs, community facilities plans, comprehensive city plans, land use plans, official maps, and transportation plans are specifically defined.

The Committee believes that the proposed bill will eliminate the confusion which exists under present city planning and zoning statutes as to the differences in the various types and purposes of plans and maps.

In Section 3: That a city may carry on comprehensive city planning.

In Section 4: That the governing body of a city may create a planning commission to act in an advisory capacity to the governing body. The membership of the planning commission is not limited and may include city officials, but at least one member must reside outside of the corporate limits of the city and, if possible, within the territorial limits of the zoning and subdivision regulation authority of the city.

The Committee believes that membership on a city planning Commission should be determined by the governing body of the city; however, assurance

is made that a representative of the area outside the corporate limits of the city and preferably within its regulatory control is on the planning commission.

In Section 5: That a city with a zoning ordinance or an official map shall provide for a board of appeals and adjustments.

In Section 6: That the planning commission shall prepare a comprehensive city plan and recommend the plan to the governing body. Upon receipt of the plan, the governing body shall transmit a copy to the State Planning Division for review and comment, and after 30 days the governing body may adopt the plan by majority vote after a public hearing.

The Committee believes that a comprehensive city plan should be promulgated and adopted on a local level, with the ability of the city to seek technical assistance from the State Planning Division. The minimal form of assistance to be provided by the State Planning Division is a review of the proposed plan and to comment upon any conflicts of the plan with state law and adjoining local or areawide plans and recommend changes to eliminate the conflicts.

In Section 7: That the planning commission shall propose to the governing body means for putting a comprehensive city plan into effect, including zoning regulations, subdivision regulations, and official map, a program for coordination or public improvements and services, urban renewal, and a capital improvements program. After a comprehensive city plan has been recommended to the governing body, no public agency within the city shall acquire or dispose of land or authorize a capital improvement without review by the planning commission.

In Sections 8 and 9: That a city may zone and control the subdivision of land within its corporate limits and may extend its authority outside its corporate limits depending upon its population — cities less than 1,000 — up to one mile; cities from 1,000 to 3,000 — up to two miles; cities from 3,000 to 10,000 — up to three miles; and cities of 10,000 or more — up to six miles. To avoid overlap where there are two noncontiguous cities, the extent of authority outside corporate limits is in proportion to the authority of each city or may be established by mutual agreement where there are special factors such as geographic considerations. Public notice and hearings must be held on proposed zoning ordinances and amendments and prior to approval of subdivision plats.

A two-thirds vote of the governing body is required to adopt zoning ordinances or amendments.

The Committee believes that the major improvement the city planning and zoning revision bill has over existing statutory provisions is the authority to exercise zoning and subdivision control outside the city's corporate limits to control the use of land which directly or indirectly affects the city. The Committee believes that the present authority of a city to control the subdivision or platting of land within six miles of its corporate limits, subject to the approval of the county planning commission, is inadequate to ensure comprehensive city planning.

In Section 10: That, after adoption of a major thoroughfare plan and a community facilities plan, the planning commission may recommend the adoption of an official map of land needed for future public use. The governing body may adopt the official map after a public hearing, and after adoption no building permit may be issued in violation of the official map. Buildings constructed within a mapped street or outside of any building line without a permit or a violation of a permit may be acquired by the city with or without paying compensation. Appeals may be made to the board of appeals and adjustments if a building permit is denied.

In Section 11: That a copy of subdivision regulations and official maps shall be filed with the county register of deeds, a copy of a comprehensive city plan shall be filed with each contiguous city and with any regional planning agency serving the area, and a copy of subdivision approvals shall be filed with the governing body of contiguous cities and with the county register of deeds if the subdivision is outside of the city's corporate limits.

In Section 12: That any person aggrieved by a decision of the governing body or a board of appeals and adjustments may appeal to district court if administrative remedies have been exhausted.

In Section 13: That a city may enforce its actions by seeking appropriate judicial relief.

In Section 14: That existing plans, maps, zoning ordinances, and subdivision regulations legally adopted prior to the effective date of the Act are valid for two years in order to allow cities sufficient lead time to comply with the procedures and requirements under the new legislation.

In Section 15: That violation of the Act is a class A misdemeanor.

In Section 16: Repeal of Chapters 40-47 and 40-48, which presently provide for city zoning and municipal master plans and planning commissions.

Although Chapter 11-33 authorizes the establishment of county planning commissions to promulgate county zoning regulations, the chapter

does not provide procedures for preparing comprehensive county plans. The Committee, in its proposed bill to revise county planning and zoning authority, is recommending the establishment of comprehensive planning procedures and implementation processes basically identical to the procedures and processes established in the proposed bill to revise city planning and zoning authority.

The Committee, in its proposed bill to revise county planning and zoning authority, is recommending:

In Section 1: A statement of policy that county planning guides future action so that land is developed to serve citizens effectively.

In Section 2: Specific definitions of comprehensive county plans and land use plans.

In Section 3: That a county may carry on comprehensive county planning.

In Section 4: That the board of county commissioners may create a planning commission to act in an advisory capacity to the board. The planning commission is to be composed of nine members with two representatives of the board of county commissioners, two representatives of city government, and five members at large, of whom at least four must be bona fide farm operators.

The Committee believes that membership of county planning commissions should be specifically delineated to ensure representation from county and city government and from rural areas. Local input into the county planning commission was sought to be ensured due to the proposed repeal of the existing township zoning authority.

In Section 5: That a county with a zoning ordinance shall provide for a board of appeals and adjustments.

In Section 6: That the planning commission shall prepare a comprehensive county plan and recommend the plan to the board of county commissioners. Upon receipt of the plan, the board of county commissioners shall transmit a copy to the State Planning Division for review and comment, and after 30 days the board may adopt the plan by majority vote after a public hearing.

In Section 7: That the planning commission shall propose to the board of county commissioners means for putting the plan into effect, including zoning regulations and subdivision regulations. After a comprehensive county plan has been recommended to the board of county commissioners, no public agency within the county shall acquire or

dispose of land or authorize a capital improvement without review by the planning commission.

In Sections 8 and 9: That a county may zone and control the subdivision of land not located within the zoning or subdivision regulation authority exercised by a city. Public notice and hearings must be held on proposed zoning ordinances and amendments and prior to approval of subdivision plats. A two-thirds vote of the board is required to adopt zoning ordinances or amendments.

In Section 10: That a copy of subdivision regulations shall be filed with the county register of deeds, a copy of a comprehensive county plan shall be filed with contiguous counties and with any regional planning agency serving the area, and a copy of subdivision approvals of plats contiguous to another county shall be filed with the board of county commissioners of that county.

In Section 11: That any person aggrieved by a decision of the board of county commissioners or a board of appeals and adjustments may appeal to district court if administrative remedies have been exhausted.

In Section 12: That a county may enforce its actions by seeking appropriate judicial relief.

In Section 13: That existing plans, zoning ordinances, and subdivision regulations legally adopted prior to the effective date of the Act are valid for two years in order to allow counties sufficient lead time to comply with the procedures and requirements under the new legislation.

In Section 14: That violation of the Act is a class A misdemeanor.

In Section 15: Repeal of Chapter 11-33 and Sections 58-03-11 through 58-03-15, which presently provide for county planning commissions and township zoning authority.

The Committee believes the existence of township zoning authority establishes a third level of local zoning which is unnecessary for coordinated land use planning activity.

The Committee also recommends a bill to revise and consolidate various provisions of law which authorize local government entities to join in their efforts of planning the use of land. The Committee, in its proposal for joint planning commission authority, is recommending:

In Section 1: To amend Section 11-35-01 so that cities, counties, or cities and counties may enter into agreements to exercise joint planning authority through the establishment of joint planning commissions.

In Section 2: To amend Section 11-35-02 so that joint planning commissions may be given the authority to exercise any or all powers conferred by state law upon any or all of the parties to the agreement in matters of planning.

In Section 3: That a joint plan is made effective by following substantially the procedure required to be followed by the city or county and by filing the plan as required under Section 4.

In Section 4: That the joint plan shall be submitted to the State Planning Division for review and comment. Upon the certification to the joint planning commission by every city or county governing body that the plan has been adopted, the plan shall be filed by the commission with the State Planning Division.

In Section 5: That any person aggrieved by a decision of a joint planning commission may seek judicial review in district court if administrative remedies have been exhausted.

In Section 6: Repeal of Sections 54-34.1-10 through 54-34.1-14 which provide for the establishment of regional and metropolitan planning agencies. The provisions of those sections are substantially placed in Chapter 11-35 as amended by the proposed bill.

The Committee believes this bill clarifies the requirements for engaging in joint planning activities and consolidates enabling provisions presently found in two separate chapters of law into one comprehensive chapter.

Review and Comment Authority — Recommendation

The Committee believes that some type of coordination of land use planning is needed at the state level to provide an overview of the activities conducted by local land use planning agencies. The first step of this coordination is provided in the proposed bills to revise city and county planning and zoning authority by requiring the submission of comprehensive plans to the State Planning Division for review and comment prior to local approval. The second step is to describe the type of review and comment authority to be exercised by the State Planning Division on local plans submitted by planning agencies. This step is accomplished in the bill being recommended by the Committee.

The Committee, in its proposed bill on review and comment authority, is recommending:

In Section 1: To amend Section 54-34.1-01 to provide four specific definitions of terms used throughout Chapter 54-34.1.

In Section 2: To amend Section 54-34.1-02 to replace the term "agency" with the term "division" as it refers to the State Planning Division (revise obsolete language).

In Section 3: To amend Section 54-34.1-03 to revise obsolete language and eliminate townships from consideration as planning agencies due to the repeal of township zoning authority under the proposed county planning and zoning revision bill.

In Section 4: To amend Section 54-34.1-04 to revise obsolete language and specifically authorize the division to plan for the use of land and review and comment on proposed plans submitted by planning agencies and review and comment on certain activities for which a permit is sought from a state department or agency.

In Sections 5 and 6: To amend Sections 54-34.1-05 and 54-34.1-06 to revise obsolete language.

In Section 7: To amend Section 54-34.1-08 to authorize the division to provide assistance to governmental planning agencies in the form of outright grants of financial, technical, or other aid, financial assistance on a matching basis, or technical assistance to the planning process.

In Section 8: To amend Section 54-34.1-09 to include the provisions of Section 54-34.1-15 in one section authorizing the division and any planning agency to apply for funds or services from any other planning agency.

In Section 9: That any planning agency may avail itself of the review and comment services of the division. The division is required to provide written comments on any proposed plan or implementation process submitted for review and comment services within 30 days. The comments are to include information concerning proposed policies, procedures, or processes in conflict with state law or in disharmony with adjoining local or areawide plans or implementation processes and steps, procedures, or changes recommended to be taken to eliminate any conflicts or disharmony.

This section is the section establishing the extent of review and comment authority by the State Planning Division on plans submitted by cities, counties, or joint planning commissions under the provisions of the proposed bills to revise city and county planning and zoning authority.

In Sections 10, 11, 12, and 13: No person is to apply for a permit for an activity having an impact of more than local significance or an impact of state concern from any department or agency of the State prior to notifying the division, unless the permit is excepted from application of these sections by the division. The notification is to include the identity

of the applicant, the location of the proposed activity, a description of the proposed activity, and a statement as to whether an environmental impact statement is required. The division is to evaluate the significance of the proposed activity with regard to state, areawide, or local plans to determine whether the proposed activity merits further evaluation. If it does, the division is to notify appropriate persons and agencies, act as a liaison between the applicant and the permit-issuing agency, and provide written comments on the application within 30 days. The comments are to include the extent the proposed activity is consistent with comprehensive planning for the state, area, or locality, the extent the proposed activity needs to be coordinated with other projects or activities, the environmental impact of the proposed activity, the probable impact on the tax base and on demand for governmental services, and the impact on distribution of population.

The review and comment authority bill is directed towards two results — review and comment on local comprehensive plans and processes (Section 9) and review and comment on permit applications for activities having more than local significance or state concern (Sections 10 through 13). Although both processes are independent of one another, the Committee included them in one bill due to the coordination attempted for local plans and processes and for activities having an impact of more than local significance. The Committee believes that with the overall coordination envisioned by the bill, adequate data will be accumulated by the State Planning Division to aid in commenting on local plans and processes and in providing information on activities of more than local significance.

In Section 14: Repeal of Section 54-34.1-15 which was combined with Section 54-34.1-09.

Municipal Incorporation Revision — Recommendation

The Committee also received testimony urging consideration of improvements in the municipal incorporation statutes to provide a relationship with the proposed revision of city and county planning and zoning authority. The North Dakota League of Cities presented proposals for improvement in municipal and incorporation requirements and the proposals were incorporated into the recommended bill.

The Committee recommends a bill to revise the municipal incorporation statutes by establishing new requirements for incorporation of unorganized territory as a city, providing a procedure for incorporation without requiring an election, and revising obsolete and archaic language in the basic municipal incorporation statutes contained in Chapter 40-02.

The bill would require that after July 1, 1975, the requirements for incorporation of unorganized territory as a city are that the territory:

1. Is consolidated and does not exceed two square miles in area;
2. Is not included within the corporate limits of a city nor located within the territorial limits of the zoning and subdivision regulation authority of an incorporated city;
3. Has a population of at least 200 residents, with a population density of at least 100 residents per square mile of area;
4. Is urban in nature and does not include large amounts of agricultural land; and
5. Will be able to provide the basic urban services of fire and police protection, street improvements, and water and sewer facilities within a reasonable length of time after incorporation.

The bill would require that a petition for incorporation describe the area of the proposed city by metes and bounds, indicate the number of residents, approximate the assessed valuation of the property, describe the existing basic services, give the name of the proposed city, and request incorporation under one of the three forms of city government.

The bill would ensure that public notice of proposed incorporation is given by requiring notice to be posted in the county auditor's office and published in the county newspaper.

Finally, the bill would authorize the board of county commissioners to order incorporation of unorganized territory as a city without requiring an election where the petition for incorporation is signed by at least two-thirds of the electors residing within the territory. The present ambiguity for selecting the first officials of a new city would also be eliminated by the bill in that a city election would be held within 60 days after the order of incorporation is made by the board of county commissioners.

The Committee believes that revision of the municipal incorporation statutes is necessary to ensure orderly and planned urban growth in North Dakota. By establishing the minimum requirements contained in the proposed bill, the Committee believes that unnecessary incorporation of unorganized territory will be reduced and existing urban centers will not become hindered in their planned growth and development.

Although no comprehensive land use planning bill is being recommended by the Committee, the Committee believes its proposals for revision of planning statutes is the important first step to a comprehensive land use plan of the future. In addition to the revision of local planning and zoning authority, the Committee is recommending new procedures with regard to state assistance in local planning efforts through the review and comment authority given the State Planning Division. In addition, an important step in planning for large industrial growth is being recommended by the Committee through the proposed Energy Conversion and Transmission Facility Siting Act.

NATURAL RESOURCES "B"

Senate Concurrent Resolution No. 4065 of the Forty-third Legislative Assembly directed the Legislative Council to study the State's environmental laws and regulations to determine whether or not additional laws and regulations in the area of environmental control were needed. The resolution also urged that special emphasis be given to the consideration of the necessity for a State Department of Natural Resources, a State Environmental Protection Agency, environmental impact statements, weather modification authority, and the right of citizens' suits to halt environmental degradation. In addition, the result authorized the study to determine whether existing environmental laws and regulations require amendment, and to determine the adequacy of enforcement of existing environmental laws and regulations.

The study was assigned to the Legislative Council's interim Committee on Natural Resources "B", consisting of Representatives Richard Hentges, Chairman, Myron Atkinson, Earl Bassingthwaite, Normen Grubb, Elynor Hendrickson, Clarence Jaeger, Byron Langley, and Earl Rundle; and Senators Lee Christensen, Stella Fritzell, Shirley Lee, Ken Morgan, and Jerome Walsh.

As an addition to the study topics set out above, the Legislative Council's Committee on Resources Development referred the matter of the North Dakota water appropriation laws to the Committee on Natural Resources "B" to determine if amendments to existing laws were needed.

The report of the Committee on Natural Resources "B" was submitted to the Legislative Council at the biennial meeting of the Council held at Bismarck. The report and recommended legislation were adopted for submission to the Forty-fourth Legislative Assembly by the Legislative Council in November 1974.

BEGINNING THE STUDY

To begin the Committee's study of the area of environmental laws, the Committee listened to presentations by citizens and by the administrators of those state agencies which have the duty of administering many of the North Dakota environmental laws. Citizens appearing before the Committee urged that the Committee consider such legislation as an Environmental Policy Act and a law allowing individuals to sue persons who degraded the environment. Representatives from the State Water Conservation Commission, the State Game and Fish Department, the State Water Users Association, and the State Health Department were also heard from. Each made some suggestions as to possible areas of environmental

law that the Committee might study. The Committee also considered an extensive report from the State Health Department concerning its organization and administration of many of the State's pollution control laws.

UPDATING POLLUTION CONTROL LAWS

As background for that portion of the Committee's study dealing with the adequacy and enforcement of existing environmental laws and regulations, the Committee considered testimony and an accompanying two-volume report on current environmental laws and regulations presented by Mr. W. Van Heuvelen, Executive Officer and Chief of the Environmental Health and Engineering Services Division of the State Health Department. Based on the report and following testimony, the Committee requested Mr. Van Heuvelen to prepare recommendations concerning obsolete or archaic environmental laws which he believed should be repealed or amended. His recommendations were presented to the Committee and four bills were requested to be drawn.

Committee Recommendation

The Committee recommends the adoption of four "housecleaning" bills, which will be briefly summarized in separate paragraphs.

The Committee recommends a bill to repeal Sections 61-01-12, 61-01-13, and 61-01-14 of the Century Code. These sections deal with the authority of the Health Department to prevent certain types of water pollution. The Committee feels that the intent of these sections is covered by Chapter 61-28, the chapter on water pollution control.

The Committee recommends a bill to repeal Sections 36-07-04, 36-07-05, and 36-07-06 of the Century Code. These sections deal with pollution problems caused by rendering plants. The Committee believes these sections are duplicative of the more comprehensive water and air pollution laws contained in other chapters of the Code. In acting on these sections, the Committee urged that in its revision of state criminal laws, the Committee on Judiciary "B" give particular attention to the nuisance laws as a method of environmental control.

The Committee recommends a bill to repeal Sections 23-12-01 and 23-12-02 of the Century Code. These sections require the disinfection of second-hand goods prior to sale. The Committee found that these sections were both obsolete and unenforceable.

The Committee recommends a bill to amend Subsection 9 of Section 61-28-04 and to repeal Section 40-22-04, Subdivision c of Subsection 2 of Section 61-02-14, and Sections 61-02-15 and 61-02-21 of the Century Code. The effect of this bill would be to repeal the authority of the State Water Commission to control water pollution, and the construction of waste treatment facilities, and to require that construction plans for waste treatment facilities be sent to the Water Commission only for its information and advice. The intent of this bill was recommended to the Committee by both the Health Department and the State Water Commission. Testimony offered by these agencies showed that under current procedure, the Department of Health was exercising primary responsibility in this area, and the proposed amendments would therefore reflect current procedure more accurately.

In addition to the above "housecleaning" bills, the Committee recommends a bill to add a representative of the environmental sciences to the Air Pollution Control Advisory Council now operating within the Health Department. At the request of the Committee, the bill changing the membership of the Council was drafted separately from the bill amending the air pollution control laws, to be discussed below. A majority of the Committee members had originally voted to remove the industry representatives who now sit on the Air Pollution Control Advisory Council. However, after soliciting comments from some representatives from industry and the Department of Health, the Committee rescinded its action in favor of making the above recommendation.

SOLID WASTE MANAGEMENT

As preparation for that part of the study dealing with solid waste management, the Committee directed the staff of the Legislative Council to prepare a review of Senate Bill No. 2337, the solid waste management bill defeated by the 1973 Legislature.

The Committee listened to several presentations by the Department of Health on Senate Bill No. 2337. The testimony showed that the Health Department was generally very satisfied with the form of the solid waste management bill introduced in the 1973 Legislature and that solid waste legislation was still considered to be important and necessary. Representatives of the department explained to the Committee that much of the interest in solid waste legislation came from farmers and ranchers who were disturbed by the conditions caused by uncontrolled solid waste disposal facilities. After consideration of these presentations, the Committee decided that some minor amendments concerning the penalty section and the effective date of Senate Bill No. 2337 were needed, and that a bill draft should be drawn embodying these amendments, but following the same format as Senate Bill No. 2337.

Committee Recommendation

The primary purpose of the bill recommended by the Committee is to authorize the Department of Health to control the design and operation of solid waste facilities through a solid waste permit system administered by the department. In addition, the department is authorized to provide technical assistance to political subdivisions, inspect and review all solid waste management facilities, and require the filing of plats of a completed operation. The bill provides an exemption for the disposing of household wastes by natural persons who reside on unplatted land in unincorporated areas. Solid waste management facilities existing at the effective date of the bill must comply with its provisions within 12 months.

During discussion of the requested bill draft, a number of the Committee members voiced their concern with language in the bill which declared that "the people of North Dakota have the right to a clean environment." The Committee believes such language should not create substantive rights, but rather that it should be limited to general interpretations of state policy.

The Committee also agreed to amend the definition of "solid waste" as it appeared in Senate Bill No. 2337. The amendment would, among other things, exclude the language specifically pertaining to agricultural operations, as the Committee feels that wastes resulting from such operations would be included by the term "waste materials resulting from industrial and commercial operations".

AIR POLLUTION CONTROL

As background material, the Committee members received a copy of Chapter 23-25, the current North Dakota air pollution control laws. After learning early in its schedule of meetings that the Department of Health was willing to suggest changes that should be made to the existing laws, the Committee requested the department to furnish a list of suggested amendments to Chapter 23-25. At subsequent Committee meetings, the department presented and reviewed with the Committee two drafts of proposed amendments.

The Committee recognized that two types of proposed amendments would be suggested: those amendments required by federal law, the 1970 Clean Air Act and amendments thereto, and those amendments suggested by the Department of Health simply to provide the State with a more cohesive, workable law regulating pollution of the air. Amendments of each type were included in the bill that the Committee requested to be drawn.

Committee Recommendation

The bill recommended by the Committee would add several powers and duties to those currently

exercised by the Department of Health. The department would be given the authority to establish ambient air quality standards, require the owner or operator of a regulated air contaminate source to use pollution monitoring equipment and keep records on data collected. The recommended inclusion of authority to regulate such "indirect" air contaminant sources as parking lots caused some concern among Committee members. However, it was recognized that this authority is required by federal law. A new section on permits is also included in the bill, establishing a basic system by which the department may regulate air contaminant sources and keep pollution control efforts on a timetable.

Another area of new authority granted to the department by the recommended bill is the authority of the department to require monitoring and recordkeeping of "air contaminant sources". Several Committee members and others in attendance at Committee meetings questioned the granting of such broad authority. Representatives of the Health Department agreed that the authority appeared broad, but reminded the Committee members that the requirements applied only to air contaminant sources regulated by the department. The Committee acknowledged the fact that the other alternative of listing particular air contaminant sources that could be made subject to the department's regulations was unacceptable.

The Committee recommends a new section concerning the department's right of onsite inspections, allowing the agents of the department to inspect air contaminant sources and obtain pollution samples or install sensing devices in such sources. Although the recommended section would eliminate the formal consent and warrant procedures required under the current air pollution control law, the Committee understood and intends that applicable constitutional safeguards must still be observed.

The recommended changes to the section on confidentiality of records would place the burden of proving that records contain trade secrets upon the owner or operator of the air contaminant source. The records would then be available only to officials of the Department of Health. This proposed section is thus more limited than the current law which defines "trade secrets" very broadly.

The Committee recognized that federal law will require the establishment of maximum penalties for both civil and criminal violations of the air pollution control statutes, and that the federal requirements must be adhered to if the State is to receive federal air pollution control funds. The Committee therefore recommends that the federal guidelines of maximum penalties for violation of the air pollution control statutes, or implementing regulations, be followed.

STUDY OF ENFORCEMENT OF ENVIRONMENTAL LAWS AND ENVIRONMENTAL POLICY

Method of Study

To begin that portion of the study dealing with the adequacy of enforcement of environmental laws, and the need for citizens' suits to halt environmental degradation, the Committee began by receiving testimony from representatives of the Health Department concerning its enforcement policies, and testimony from citizens on a need for citizens' suits.

Personnel of the Department of Health explained to the Committee that the department has received good cooperation from North Dakota industries regulated by the department. For this reason, the Health Department has been able to solve most pollution problems by informal or administrative action rather than by lawsuit. It was noted that the department follows a policy of reasonableness and restraint, and in turn, there have been only occasional refusals to cooperate.

Citizen testimony reflected a concern for the State's environment in light of possible development of the State's energy resources. A number of persons testifying before the Committee suggested that legislation be enacted that would provide a method of enforcing environmental laws in addition to enforcement by the Health Department and the Attorney General. At this first meeting, the Committee accepted the written offer of Mr. Robert E. Beck, a professor of law at the University of North Dakota, to provide assistance to the Committee.

Professor Beck appeared before the Committee at its second meeting to discuss various theories of environmental protection and environmental policy. Professor Beck reviewed pertinent laws from the States of Minnesota and Michigan, and the Committee compared these laws to the suggested State Environmental Policy Act, drafted by the second National Symposium on State Environmental Legislation and adopted by the Council of State Governments for inclusion in the 1973 volume of **Suggested State Legislation**. It was noted that two different theories were presented by the three pieces of legislation examined by the Committee. The first theory, embodied in the Suggested State Environmental Policy Act, was that the State should have an environmental policy and that citizens should be told whether or not particular government actions followed that established policy. The second theory, embodied in the Michigan and Minnesota Acts, is that citizens should be able to enforce environmental laws themselves.

Because there were differences among Committee members as to which direction the Committee should proceed, it was decided that, as the Committee might want to recommend a number of

alternatives to the Forty-fourth Legislative Assembly, the Committee should proceed along two routes. The Committee requested Professor Beck to prepare alternative drafts of a State Environmental Policy Act, setting forth a state policy and requiring environmental impact statements to be filed on certain state projects; and alternative drafts of an Environmental Law Enforcement Act that would allow individuals to sue to enforce environmental laws.

ENVIRONMENTAL POLICY

Drafts of the North Dakota Environmental Policy Act drawn by Professor Beck, and later amended by the staff of the Legislative Council, presented a number of areas of concern to the Committee. These areas were:

1. The state actions or projects requiring environmental impact statements.
2. The particular state agencies that should be required to file environmental impact statements.
3. The creation of substantive rights by a statement of policy.
4. Exemptions for certain projects.
5. Administration of the Act.

As background material that would help the Committee see what other states have done in the area of environmental policy, the Committee was presented with a memorandum outlining the environmental impact statement requirements of the various state laws of New Mexico, Montana, Minnesota, California, and Wisconsin. In this memorandum, the Committee was presented with several alternatives to answer the concerns listed above.

In determining which actions or projects should require the writing of an environmental impact statement, the Committee noted that most states have followed the language of the National Environmental Policy Act of 1969 (NEPA). NEPA requires that impact statements be filed on "major (federal) actions significantly affecting the quality of the human environment". Testimony before the Committee from various state agencies showed that there was a great deal of concern over the question of which projects state legislation would apply to, primarily because of the expense to which state agencies could be put in preparing environmental impact statements. Rejected at the outset was the possibility of applying the environmental impact statement requirement to individual, or private actions. Almost without exception, Committee members felt that such a requirement would impose too heavy a burden upon an individual's use of his property. The more acceptable alternative was to apply the environmental impact statement requirement only to certain "state projects".

A second question necessarily connected with the first that was studied by the Committee was which state agencies should prepare environmental impact statements. This question proved as difficult as the first, and testimony showed that it, too, would have no small impact on the cost of state and other governmental units. The Committee noted that most of the states studied applied the environmental impact statement requirement only to those agencies with statewide jurisdiction.

One of the objectives of a North Dakota Environmental Policy Act suggested by Professor Beck and subsequently supported by citizen testimony was that the Act should contain a unifying statement of state environmental policy. The purpose of such a policy would be to serve as a guideline for the future interpretation of other state laws dealing with the environment. While concurring in the need for a policy statement, many Committee members became concerned that such a statement would grant the right to a clean environment which could not, in fact, be fulfilled.

Several alternatives were presented to the Committee by which they could provide for the enforcement of a proposed North Dakota Environmental Policy Act. These alternatives were:

1. Enforcement of agency duties by citizens' suits only.
2. Allow each agency writing an environmental impact statement to promulgate its own rules and regulations governing the writing and circulating of the statement.
3. Appoint an administrative agency to furnish guidelines. Such guidelines could be either advisory, policy, or a combination of both.

In their discussion of these alternatives, the Committee members examined the methods of administration used in the other states contained in the memorandum and heard testimony from the administrators of various North Dakota state agencies.

Committee Recommendation

With this background and after further consideration, the Committee recommends a bill similar to the National Environmental Policy Act.

Section 6 (2) (d) of the recommended bill requires that all "agencies" prepare environmental impact statements on "... every project that may foreseeably have a significant adverse effect upon the natural environment..." The Committee originally considered language which would have applied the environmental impact statement requirement to every state project, without

limitation. However, it soon became apparent that under such a requirement, a tremendous number of environmental impact statements would have to be written at an equally tremendous cost to the State. For this reason, the Committee requested that limitations of some sort be placed upon the environmental impact statement requirement.

The Committee determined that despite the cost of environmental impact statements, the requirement should apply broadly, as the potential for environmental damage from projects administered by political subdivisions of the State was no less than the potential for damage from projects administered by agencies with statewide jurisdiction. Thus, the definition of "agency" to which the environmental impact statement requirement applies is made to include all agencies with statewide jurisdiction as well as "counties, cities, and other political subdivisions".

Other limitations upon the "projects" to which the environmental impact statement requirement applies were provided by applying the requirement only to effects upon the environment that are "significant" and "adverse".

As a further limitation, the bill recommended by the Committee would limit the environmental impact statement requirement only to those projects affecting the "natural" environment. This limitation is added to give emphasis to a subject which has largely gone ignored in the realm of legal rights.

Section 7 of the bill requires the preparation of draft environmental impact statements. These drafts are to be circulated to other state agencies for comments under Section 6 (2) (f).

A list of exemptions to the environmental impact statement requirement is given in Section 8. These exemptions include such projects as those subject to the NEPA impact statement requirement and emergency projects that are undertaken for public health, safety, or welfare. The last three exemptions listed in this section were deemed essential by the Committee in order that the operation of the recommended bill not be so ponderous as to be unworkable or unenforceable. These three exemptions are for:

1. Application, review, or issuance of discharge permits issued pursuant to Chapter 61-28 (water pollution control) and Chapter 23-25 (air pollution control).
2. Any action taken to enforce an environmental law.
3. Preparation of or action on legislation.

As an attempt to avoid the type of litigation generated by NEPA, Section 10 of the bill provides

that environmental impact statements need not be prepared for projects which were fully and finally approved prior to March 15, 1975.

Section 13 of the bill is a clear departure from the National Environmental Policy Act in that it provides that any state resident may maintain a legal action to enforce requirements of the proposed bill. A grace period of 30 days is allowed after notice to the agency involved, in which that agency may take remedial steps to comply with the provisions of the bill. Because of the Committee's concern that dilatory legal actions may be inspired by this type of citizens' suit provision, this section also would allow the court to award costs, including attorney's fees, to the defendant in a frivolous suit.

The final section of the bill recommended by the Committee designates the Department of Health as the agency responsible for administration of the Act. The department, in turn, may make agreements with the State Planning Division for administrative assistance. In determining the proper method of administration for the proposed bill, the Committee found that the placement of administrative duties within a particular department could affect legislation being considered by the Committee on Natural Resources "A". To minimize the inconvenience to the two Committees caused by this possible conflict, the Committees met jointly to resolve the differences in their respective bill drafts, and to review the work done by both Committees during the interim.

ENVIRONMENTAL LAW ENFORCEMENT

At the Committee's request, Professor Beck provided the Committee with alternative drafts of a North Dakota Environmental Law Enforcement Act. The basic differences between these alternatives were:

1. Whether or not a person needs to be "aggrieved" in order for him to sue to enforce an environmental law.
2. Whether or not the court should be able to require a bond of a complainant before suit is filed.

In the Committee's discussion of the alternatives, some Committee members expressed doubt as to the ability of the bill to properly define an "aggrieved" party, although most members agreed that the bill should provide a limitation on those persons able to sue.

The testimony presented to the Committee concerning the bonding requirement indicated that some groups and individuals felt that a suit to enforce an environmental statute or regulation should no more require a bond than a suit to recover for injuries caused in an automobile accident.

At a subsequent meeting, the Committee directed the Legislative Council staff to combine certain provisions of the alternative drafts presented by Professor Beck. The Committee believes that this type of environmental legislation is needed, but that it should be narrowly drafted and include protections, such as a bonding provision, to help prevent frivolous litigation.

Committee Recommendation

The bill recommended by the Committee provides that "any state agency, with the approval of the attorney general; any person, or any county, city, township, or other political subdivision aggrieved by the violation of any environmental statute, rule, or regulation . . ." may bring a legal action either to enforce the statute or regulation or to recover damages resulting from the violation. No damages would, however, be recoverable in a suit brought against the State.

It can be seen that while other complainants may sue at their discretion, state agencies are required to obtain the approval of the Attorney General before those agencies may bring legal action. The Committee believes that such a requirement is necessary in order to avoid inter-departmental litigation of which the Attorney General is unaware, and to prevent the fragmentation of legal services to state agencies.

As a prerequisite to the filing of an action under this bill, the complainant, would be required to give 30 days' notice, by certified mail, of intent to file suit to the person alleged to have violated the law, to the state agency or political subdivision responsible for administration of the law, to the state's attorney in the county in which the alleged violation occurred, and to the State Attorney General.

The Committee thought it was essential to include as many provisions as possible to protect the State and other persons from frivolous litigation. For this reason, both the provision allowing the court to require a bond and allowing the court to award attorney's fees against the complainant have been included in the bill. The bond may be cash only and not to exceed \$500.

The relief that may be provided by the court is specified in the bill. As one of the alternatives for relief, the court may grant any relief provided for in the environmental law alleged to have been violated. For example, the court may impose the penalties provided for in Chapter 61-28 (water pollution) if the defendant is found to have violated that chapter. Such relief may be given in addition to any damages awarded to the complainant or equitable relief granted. A section of the bill also specifically states that the remedies provided for in the bill are in addition to, and not in place of, any other form of relief

available under the common law or other statutory provisions. But, if the State or any other complainant invokes the jurisdiction of the court through the Environmental Law Enforcement Act, the complainant must follow the procedure provided in the bill.

STUDY OF NATURAL RESOURCE MANAGEMENT AND ENVIRONMENTAL CONTROL AGENCIES

Method of Study

To begin the study concerning possible environmental control and natural resource management agencies for the State, the Committee reviewed the report of the 1942 Governmental Survey Commission, the 1966 Report of the Legislative Council's Committee on State, Federal, and Local Government, and a number of memoranda prepared by the staff of the Legislative Council.

In 1942, the North Dakota Governmental Survey Commission contracted with the Public Administration Service of Chicago, Illinois, for a study of governmental organization in North Dakota and adopted certain recommendations made by the company. The commission recommended in its report that a Department of Conservation be created under a director to be appointed by the Governor. It was recommended that the State Water Commission, the Flood Control Commission, the Mouse River Valley Authority, the Missouri River Basin Commission, the Red River of the North Drainage Basin Commission, the Game and Fish Commissioner, the State Geologist, and the State Engineer be abolished, and that the powers and duties of these agencies and offices be included in a Department of Conservation.

The 1966 Report of the Legislative Council's State, Federal, and Local Government Committee, then a subcommittee of the Legislative Research Committee, was also considered by the Committee on Natural Resources "B". The subcommittee had corresponded with several states having departments of natural resources or conservation and concluded that the most efficient use of the State's resources necessitated the formation of a Department of Natural Resources which would include the Water Commission, the Game and Fish Department, the State Outdoor Recreation Agency, the State Park Service, the State Forester, and the Soil Conservation Committee.

Early in its schedule of meetings, the Committee on Natural Resources "B" contacted other states to see how they have organized environmental and natural resources agencies. The Committee compared the structure of environmental agencies in most of the 50 states and found the States of Minnesota, Montana, South Dakota, and Wisconsin fairly representative of four patterns of ad-

ministrative organization in the environmental area. These four states were then studied in depth. It was found that some states, like Wisconsin, combine all natural resource management functions and pollution control functions within one umbrella-type "super department". Other states, like Minnesota, split resource management into one agency and pollution control into a separate pollution control agency. A third pattern, typified by Montana, was the retention of pollution control authority in the State Health Department, while all natural resource management functions were placed in another separate department. The fourth pattern, such as that in North and South Dakota, consisted of resource management functions split in a number of agencies while pollution control functions remained in a separate agency.

In the course of its meetings, the Committee discussed at length the purpose for, and ramifications of, the inclusion of pollution regulatory responsibility in the proposed Department of Natural Resources. The Committee heard Senator Lee Christensen say that most natural resource agencies formed in recent years had intentionally been formed of resource management agencies only, the theory being that management and pollution control were of such diverse interests that one should not be allowed to contaminate the other. Mr. W. Van Heuvelen of the State Health Department offered similar comments for the Committee's consideration.

Constitutional Considerations

Article 54 of the State Constitution provides that the School of Forestry is to be controlled by the State Board of Higher Education. Section 216 of the Constitution provides for the location of the School of Forestry. Thus, it would be impossible, without a constitutional amendment, to change either the location or control of the State School of Forestry at Bottineau.

Although the location and control of the school is constitutional, there is no constitutional requirement that the Forest Service be combined with the School of Forestry at Bottineau, or that the Geological Survey be combined with the University of North Dakota at Grand Forks. Rather, these combinations are the result of statutory requirements. Section 15-11-08 of the North Dakota Century Code requires that the Board of Higher Education provide for a Geological Survey and that the University's facilities be utilized for this purpose. In addition, Section 15-11-09 provides that the Professor of Geology at the University shall be the State Geologist. Regarding the State Forest Service, Section 4-19-01 of the Century Code provides that a member of the staff of the State School of Forestry shall be the State Forester.

From this information, the Committee recognized that a transfer of the Geological Survey and the offices of the State Geologist, and the State Forester to the Department of Natural Resources may be accomplished by statutory amendment, unhindered by the State Constitution.

Testimony given by citizens appearing before the Committee showed a concern that such a large department as a Department of Natural Resources not be subject to one-man rule. It was feared that a natural resources dictatorship would result in which inter-agency disagreements and differences would be solved by the imposition of the will of the department director, rather than in public, upon the merits of the positions of the agencies involved. In extensive discussion of this question, some Committee members pointed out that one-man rule by an elected official would be more acceptable than by an appointed one.

Department of Natural Resources Proposed

The Committee was presented with a proposal by Senator Lee Christensen that a Department of Natural Resources be created which would exercise only management functions through the consolidation of the State Water Commission, the Reclamation Division of the Public Service Commission, the Game and Fish Department, the State Park Service, the Outdoor Recreation Agency, the State Forester, and the State Geologist into one department.

Administrators Testify

Hearings were subsequently held on the proposal for the express purpose of gaining input from those agencies that would be involved in the proposed consolidation, as well as from other agencies.

A representative of the Governor's office appeared before the Committee and read a prepared statement by Governor Arthur A. Link. In the statement, Governor Link expressed his support for the department and suggested that final implementation of the proposal to create a department be completed by July 1, 1977. Other administrators appearing before the Committee expressed general support for the theory behind the proposal, but cautioned the Committee in a number of areas.

Several administrators noted that the department should not be thought of solely as a way of saving money. Rather, they said, the effect of the consolidation may be increased efficiency in serving the State and its people and in coordinating the state efforts in the natural resources area though a heavier financial burden may result. Secondly, administrators warned of the practical effect of a consolidation on such outlying agencies as the State Forest Service in Bottineau and the Geological Sur-

vey in Grand Forks, both of which receive substantial cooperation from the two colleges. It was noted that students in the Geology Department of the University of North Dakota were able to obtain considerable experience in working with the Geological Survey and, in some cases, provide additional manpower that would be costly to replace. Questions were raised as to whether these agencies would have to be moved and what the effect of such a move might be on their budgets.

Natural Resources Council Proposed

At a subsequent meeting in July, Mr. Russ Dushinske, Executive Vice President of the State Water Users Association, suggested that the Committee consider creating a Natural Resources Council similar to that abolished by the 1973 Legislative Assembly. Mr. Dushinske presented the Committee with a proposal recommended by the North Dakota Water Users Association to create such a council. After further discussion of a possible approach to the two proposals before it, the Committee requested that two bills be drawn, one creating a Department of Natural Resources as proposed by Senator Christensen, and the other creating a Natural Resources Council as proposed by Mr. Dushinske.

The Natural Resources Council bill requested by the Committee would create an advisory council consisting of the administrators of the State Water Commission, the Game and Fish Department, the Soil Conservation Committee, the Reclamation Division of the Public Service Commission, the State Park Service, the State Outdoor Recreation Agency, the State Forest Service, the Environmental Health and Engineering Services Division of the State Health Department, and the Chairmen of both the House and Senate Natural Resources Committees. The Governor is also directed to appoint two citizens interested in the management of natural resources to membership on the council.

In addition to serving as a coordinating mechanism for the natural resource agencies of the executive branch, the council is given the authority to review the various programs and policies of the state natural resources agencies to determine if those policies and programs are consistent with the declaration of policy and purpose set forth in Section 1 of the bill. The council is authorized to analyze legislative proposals, and is required to submit biennial reports to the governor, and to recommend a long-range plan for the use and management of the State's natural resources. The Governor is directed to appoint an executive director of the council, who may in turn appoint his own staff to carry out the work of the council.

The Department of Natural Resources

The second bill requested by the Committee would create a Department of Natural Resources by consolidating seven existing agencies and offices into four divisions within one department. The divisions to be created are as follows: the Water Management Division, which would assume the present duties of the Water Conservation Commission and the office of the State Engineer; the Land Management Division, which would assume the present duties of the Reclamation Division of the Public Service Commission, the North Dakota Geological Survey, and the office of the State Geologist; the Game and Fish Division, which would assume the present duties of the Department of Game and Fish; and the Parks, Forest, and Recreation Division, which would assume the present duties of the State Park Service, the State Forest Service, and the State Outdoor Recreation Agency. Each of the various divisions would be headed by a divisional administrator who would report to the Commissioner of Natural Resources.

The Commissioner of Natural Resources would be appointed by the Governor, with the consent of the Senate, and chosen on the basis of his education and experience in the area of natural resources management. Reporting directly to the Commissioner or his deputy are the heads of the five office sections of planning, finance, personnel, legal, and environmental quality control. The relative positions of these divisions and office sections are shown in the attached "Exhibit A".

In order that the department could be implemented in an orderly fashion, the bill provided that the Governor must establish a timetable for implementation of the proposal. The various provisions of the bill would then become effective upon implementation in accordance with the dates of the Governor's schedule. The provisions of the bill would be fully implemented by July 1, 1977.

In order that those departmental divisions implemented in accordance with the Governor's schedule would have necessary funding upon the date of implementation, the bill provided that all unexpended funds appropriated to those agencies to be transferred to the department may be spent by the department upon the date implementation is completed. For the purpose of funding the office of the Commissioner and his staff during the implementation period and for the purpose of funding the newly created office sections, a separate appropriation of \$100,000 was proposed.

Committee Recommendation

After considering both alternative bills at length at its last meeting, the Committee rejected both bills, and consequently was unable to agree on any legislation on the subject. Many of the Committee

members expressed dissatisfaction that there would be no legislation on a natural resources agency of any kind recommended to the Legislative Council. However, substantial objections were made to each of the alternative bills.

The Committee felt that the recommendation of a Natural Resources Council would be only a half-hearted attempt to accomplish what could better be accomplished by a Department of Natural Resources. The Natural Resources Council, in the words of some Committee members, was not an "action agency", and that the State of North Dakota did not need another council whose only authority was to "study and recommend".

The primary objection raised to the bill creating the Department of Natural Resources was that it was "dictatorial" in the sense that one man, the Commissioner of Natural Resources, would have ultimate control of the entire department. Several Committee members expressed the opinion during final debate on the proposal, that the State needs the independence of such persons as the Commissioners of the Water Conservation Commission, and that such independence would be entirely lost if the proposed department were enacted into law. A majority of the Committee considered as unacceptable the explanation that the Commissioner of Natural Resources was responsible to the Governor, an elected official.

STUDY OF WEATHER MODIFICATION

As part of Senate Concurrent Resolution No. 4065 charged the Legislative Council to study the area of weather modification, the Committee requested a representative of the Burleigh County Weather Modification Association, Mr. James Eastgate, to furnish the Committee with some specific suggestions for improving the current North Dakota law on weather modification.

At a subsequent Committee meeting, Mr. Eastgate introduced Mr. Harold G. Vavra, Director of the North Dakota Aeronautics Commission. Mr. Vavra, also a member of the State Weather Modification Association's Legislative Committee, presented a draft of suggested legislation to the Committee.

Alternative Bill Requested

Following the presentation by Mr. Vavra, the Chairman of the Legislative Council, Representative Bryce Streibel, requested that an alternative bill draft which would create a weather modification program similar to that existing in South Dakota be prepared for the Committee's consideration. This draft was then presented to the Committee at its next meeting.

Comparison of Alternatives

Each of the alternative drafts first presented to the Committee would create a state weather modification agency. The agency, known in the bill drafted by the staff of the Legislative Council as the Weather Modification Board and in the bill presented by Mr. Vavra as the Weather Modification Commission, would be composed of the Director of the Aeronautics Commission and seven representatives appointed by the Governor from seven state districts established by the bill. Under each bill, professional licenses are required of the person in charge of any weather modification operation, and permits would be required for each weather modification operation. The weather modification agency may set standards for issuance, revocation, and suspension of licenses and permits.

The primary differences between the draft presented by Mr. Vavra and the bill prepared by the staff of the Legislative Council was that under the staff bill, the State may contract with weather modification companies, and in turn provide weather modification services to the counties. Thus, the State would control the contracting process. Under the bill presented by Mr. Vavra, each county would contract directly with weather modification companies to provide services to that county.

Because the State would control the contracting and supervisory processes under the program established by the staff bill draft, it was thought that the county weather modification authorities, authorized by current law, would no longer be needed and that minimal county duties (e.g., signing of the contracts with the State Weather Modification Board) could just as well be assumed by the boards of county commissioners. These boards would receive their authority to contract with the State in the same manner in which the county weather modification authorities are presently established (i.e., election or petition by county electors). Upon presentation of the alternative bill to the Committee, several members of the State Weather Modification Association, and members of the county weather modification authorities, expressed some displeasure at the effect of the bill. Those persons offering testimony noted that the county weather modification commissioners have worked quite hard for the creation of the various county authorities, and were vitally concerned with, and interested in, weather modification. For this reason, they said, the county organizations should not be abolished.

In connection with the Committee's discussion of both drafts, the Committee heard testimony on the monetary benefits that would accrue to the State if successful weather modification programs produced an additional one or two inches of rain throughout the State. Three reports were presented to the Committee during its final two meetings concerning weather modification. The first report showed the

results of the hail suppression program conducted in Bowman and Slope Counties in the years 1966 through 1968. Among other things, this report showed a 30 to 60 percent reduction in hail intensity after seeding in the target areas, compared with the south and west control areas. The second report prepared by the Institute of Atmospheric Sciences of the South Dakota School of Mines and Technology, showed the effects of cloud seeding on growing season rainfall in North Dakota. These results were produced by a random cloud seeding experiment conducted in North Dakota each summer from 1969 to 1972. This report showed, among other things, that there was a potential for weather modification to generate about one inch of extra rainfall per growing season in the State.

The third report presented to the Committee was a summary of position statements of various scientific groups concerning the scientific nature of weather modification. Included in the last report was a technical explanation of how weather modification is accomplished.

After consideration of these reports and other testimony, the Committee requested a second draft, as a compromise between the two bills presented earlier, which would allow the State to control the contracting process, but continue the existence of the county weather modification authorities.

Committee Recommendation

The bill recommended by the Committee creates a North Dakota Weather Modification Board as a division of the State Aeronautics Commission. The Governor is to appoint seven members of the board from districts set out in the bill. The director of the Aeronautics Commission is also to be a voting member. The board is given the authority to appoint an executive director, who may in turn appoint a staff; contract with any person, the Federal Government, counties, or groups of counties to carry out weather modification operations; issue rules and regulations; and cooperate with any other person or governmental agency to help carry out the purposes of the bill.

Section 10 of the bill requires that both a license and permit be held by a "controller" before he may engage in weather modification operations. The board may, under Section 11, exempt research activities and actions of an emergency nature, from this requirement. Licenses issued by the board may be suspended or revoked for incompetence, dishonest practice, false or fraudulent representations made in obtaining a license or permit, or for failure to comply with other provisions of the chapter or rules and regulations issued under it.

A weather modification permit is required for each geographical area set out in the applicant's

operation plan. The plan must be filed with the application for a permit. The board must make a number of specific findings before it may issue a permit. The board must find that the applicant holds a valid weather modification license, that he has furnished proof of financial responsibility, has furnished both bid and performance bonds, and has North Dakota workmen's compensation coverage for all employees. In addition, the board must make specific findings that the operation satisfies three policy requirements designed to ensure successful and safe weather modification operations. The board may limit permits as to target areas, time of operation, method of operation, and materials and equipment to be used. Before a permit for any operation is issued, the board must give public notice and may hold hearings if an objection to the issuance of the permit is received.

Section 17 authorizes the board to suspend, revoke, or modify permits under certain conditions if a hearing is given first. However, a prior hearing is not required if the action taken against the permit is of an emergency nature.

Section 19 of the bill would allow the board to create operating districts, the boundaries of which may be determined by the board based upon such considerations as cropping and climatic patterns among counties, the limitations of aircraft, and limitations of other technical equipment. Assigned to each operating district is a district advisory committee, composed of one member of the county weather modification authority in each county within that district. The district committee advises the state board on the weather modification needs of each county within the district. A county may suspend all weather modification operations within that county for any reason.

The methods of creating the county weather modification authorities and the method of levying the tax is the same under the bill recommended by the Committee as under present law, with one exception: Under present law, there are two ways a weather modification authority may first be created, by petition of 51 percent or more of the county electors and by an election after petition of 20 percent or more of the county electors. The proposed bill would add a third method — a board of county commissioners could, upon its own resolution, authorize the question to be submitted to the county electors for a vote.

A section has been included in the recommended bill to make clear the fact that the bill itself does not impose or accept liability upon the State for any damage caused by a weather modification controller. Other provisions of statutory or case law may determine this question in a particular case, but the recommended bill will not.

Though the liability of the State is not specified in the bill, the bill does define the liability of the controller. It provides that an operation conducted within the statutory limits will not, in the event of damage, subject the controller to liability without fault. In other words, a successful complainant must establish that the injury was intentionally or negligently caused. Other subsections provide that the mere dissemination of weather modification materials into the atmosphere shall not constitute trespass, and that a controller shall not be able to insulate himself from liability by showing that he has been issued a license and permit or otherwise complied with the rules and regulations of the board.

The last sections of the bill provide that the State is to furnish 50 percent of the cost necessary to provide any county with weather modification operations. The cost of total operations are determined by the contracting process of the state board. County funds may be expended only for operations and not for research and development.

STUDY OF STATE WATER APPROPRIATION LAWS

The Legislative Council's Committee on Resources Development referred to the Committee on Natural Resources "B" for further study and recommendation, the question of the State's water appropriation laws and procedures as they relate to large-scale industrial users.

A Background Look

Prior to this referral, the State Water Commission had attached to a conditional water permit issued to the Michigan Wisconsin Pipe Line Co. a series of conditions concerning such things as pollution control equipment, environmental impact statements, reserves of gas for use within the State, strip mining and other areas of concern affecting the appropriation of water and the State's natural environment. As legal authority for some of these conditions was uncertain at the time the permit was granted, it was implicit in the referral made to the Committee on Natural Resources "B" that the Committee study the authority of the commission to attach such conditions and make such recommendations as the Committee felt were necessary.

The Committee reviewed several memoranda on state water appropriation laws and heard testimony from representatives of the State Water Commission. From the evidence presented, the Committee gained an appreciation of the fact that the conditions which the Water Commission had attached to water appropriation permits it had recently issued could be interpreted as an intrusion into the jurisdiction of other state agencies, notably the State Health Department and the Public Service Commission. The Committee also recognized that

both the legality and the desirability of the Water Commission's action had to be considered.

The legality of the conditions attached to the permits was addressed by a written opinion of the State Attorney General, which the Committee considered shortly after it was released. In that opinion, the Attorney General was generally supportive of the Water Commission's action, but also urged the Legislature to study the area to determine if legislative action was necessary. Thus, the Committee also considered the propriety of the Water Commission's action.

The question considered by the Committee was basically a policy question: "Which state agency or agencies should be given the responsibility of policing the State's environment, the Water Commission, or those other state agencies presently involved in environmental control?"

Alternatives Considered

It was determined that the question of the Water Commission's authority could best be discussed if specific bill drafts were presented giving the Committee the choice of either ratifying the conditions that had or would be attached to water appropriation permits, or limiting the authority of the commission to attach only certain conditions to its permits in the future.

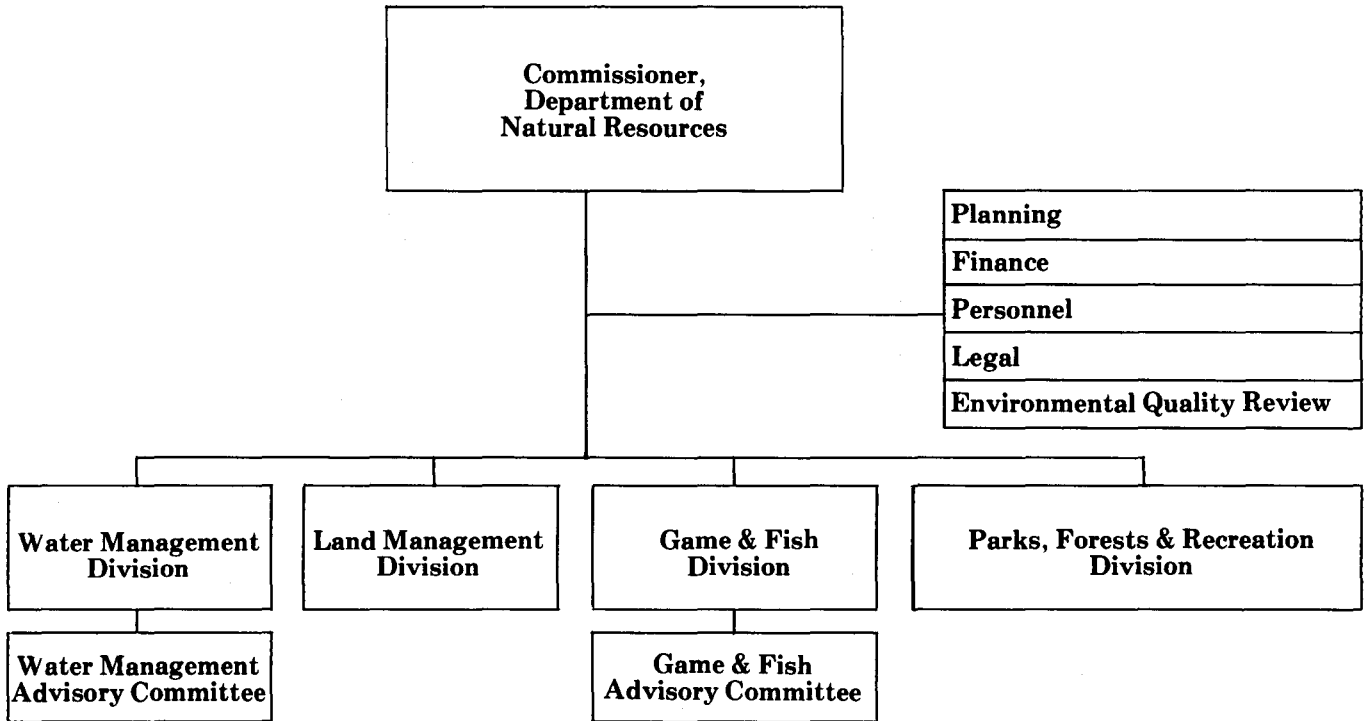
The first bill considered by the Committee would have allowed the Water Commission to attach to its permits only those conditions "directly affecting the use and appropriation of water"; the intention of the bill being to preclude the attachment of conditions which were only peripherally concerned with the use of water, such as conditions concerning air pollution control and the reclamation of strip-mined lands.

The second bill considered by the Committee would have the effect of ratifying those conditions already attached to existing permits and to allow the Water Commission, in the future, to attach those conditions dealing with the "appropriation and use of water and factors affecting the natural environment".

Committee Recommendation

The Committee concluded that the effect of the second bill would be to allow the Water Commission to exercise general regulatory power in all areas of environmental control when water appropriation permits were involved. Such broad authority was unacceptable to a majority of the Committee. The Committee therefore recommends a bill allowing the commission to attach only those conditions directly affecting the use and appropriation of water. The recommended bill would also ratify conditions applicable to permits that will already have been granted by the commission by the effective date of the bill.

DEPARTMENT OF NATURAL RESOURCES ORGANIZATION STRUCTURE



RESOURCES DEVELOPMENT

The Resources Development Committee was appointed by the Chairman of the Legislative Council in September 1973. The appointment was made pursuant to a request of the State Water Commission on August 29, 1973, which urged the establishment of a Joint Energy Advisory Committee consisting of Executive Branch members appointed by the Governor and Legislative Branch members appointed by the Chairman of the Legislative Council. In accordance with this request, Governor Link appointed a 10-man "Task Force on Coal Gasification" and Chairman Streibel appointed the "Resources Development Committee".

Members of the Committee on Resources Development were Senators L.D. Christensen, Chairman; Donald Holand, Evan Lips, and Robert Stroup; and Representatives Richard Backes, Art Bunker, Richard Hentges, Karnes Johnson, and Ralph Winge. Members of the Governor's Task Force include Dr. James Amos, State Health Officer; Myron Just, Commissioner of Agriculture; Byron Dorgan, State Tax Commissioner; Vern Fahy, State Engineer; Bruce Hagen, Public Service Commissioner; Walt Hjelle, State Highway Commissioner; Jack Neckels, Director of State Planning; Allen Olson, Attorney General; M.F. Peterson, Superintendent of Public Instruction; and Murray Sagsveen, Governor's Legislative Aide.

The report of the Committee on Resources Development was submitted to the Legislative Council at the biennial meeting of the Council held at Bismarck. The report and recommended legislation were adopted for submission to the Forty-fourth Legislative Assembly by the Legislative Council in November 1974.

MICHIGAN WISCONSIN PIPE LINE COMPANY WATER PERMIT

The resolution of the State Water Commission asked the Joint Energy Advisory Committee to collect information on social, economic, and environmental impacts of coal gasification, to make a recommendation to the State Water Commission on the Michigan Wisconsin Pipe Line Company's application for 375,000 acre-feet of water, and to make legislative recommendations as deemed appropriate to the next Legislative Assembly.

In compliance with the request to collect information on the social, economic, and environmental impact of gasification, the Joint Committee held hearings and heard testimony on such diverse topics as the gasification process itself, mined land reclamation potential and costs, the socio-economic impacts of gasification, including the

effects on transportation, health facilities, education and educational facilities, and law enforcement. Other testimony presented before the Committee included information relating to federal environmental litigation and federal environmental legislation, the contribution of lignite coal to the resolution of the energy crisis confronting the Nation, and mineral leasing practices in the State of North Dakota.

In compliance with the second request of the Water Commission which was to make a recommendation to the Water Commission on Michigan Wisconsin's water permit application, the Joint Task Force recommended that a conditional water permit for Michigan Wisconsin Pipe Line Company be granted. The recommended conditions included the recommendation that up to 17,000 acre-feet of water per year be authorized for diversion from Lake Sakakawea pursuant to Michigan Wisconsin's water permit application. (Michigan Wisconsin's general application for water for 375,000 acre-feet, a quantity sufficient for 22 gasification plants, was subsequently reduced by Michigan Wisconsin to a request for 68,000 acre-feet, a quantity which would be sufficient for four gasification plants.) It was understood by the members of the Task Force that although the permit only granted 17,000 acre-feet of water, Michigan Wisconsin would have a priority date for enough water for the three additional gasification plants which would be the same as the priority date on the 17,000 acre-feet granted.

Other conditions on the permit included the condition that the water diverted shall be for the purpose of producing synthetic gas and related processes, that the applicant use the most environmentally acceptable engineering and technological methods in the design of the gasification plant in order that evaporation and other wasteful uses of water be minimized. The applicant was required to prepare a comprehensive environmental statement and analysis concerning water appropriation for four gasification plants including a detailed section on the impact of the proposed subject plant. The fourth condition gives the State Water Commission the authority to modify or void the conditional permit within six months after receipt of the comprehensive environmental statement and analysis should it appear to a majority of the Commission that the perfection of the permit in its current form would be "contrary to the public interest". The conditions further require that the applicant comply in design and operating procedures with the orders of the State Water Commission, that the applicant shall reserve some of its product for use within North Dakota provided that the Federal Power Commission or other ap-

appropriate federal agency approves, requires the applicant to appear before appropriate legislative and executive committees to make progress reports, that the applicant contract with its coal supplier to ensure that mined or disturbed lands be returned to at least the level of agricultural productivity that existed prior to mining or disturbance or to a higher use. The permit is to be for an initial period of eight years and cannot be assigned, transferred, or sold without State Water Commission approval. The quantity of water withdrawn must be metered by the applicant and the applicant must convey all water supply and transmission facilities to the State upon the termination of the plant operation.

In all, there were 18 conditions which were recommended to be attached to the water permit. They were adopted virtually unchanged by the State Water Commission when the commission approved the water permit application and granted the conditional water permit.

RESOURCE DEVELOPMENT STUDIES

The Resources Development Committee decided to proceed further by determining a list of additional high priority studies for submittal to the Chairman of the Legislative Council with the recommendation that these additional studies be assigned to appropriate Legislative Council interim committees which were currently considering similar subject matter areas.

The Resources Development Committee determined that the effects of future coal resource development on schools and education in the impacted area to be a high priority study and that the Education "B" Committee was the appropriate committee to study the matter further.

The Committee further determined that a study of a coal severance tax, the property tax aspects of coal gasification plants, and current property tax laws in relation to the effect on the taxation of such plants, and the distribution of tax revenues to impact areas, and the pre-payment of taxes were high priority matters and should be studied by the Finance and Taxation Committee.

Further, the Resources Development Committee determined that the impact of large-scale resource development on law enforcement is a high priority study, and that the Judiciary "B" Committee would be the appropriate committee to study this impact and make an appropriate recommendation to the 1975 Legislative Assembly.

The Resources Development Committee further determined that the Transportation Committee should study impact of gasification on transportation facilities in the impact area and make any

appropriate recommendations to the Legislative Council.

The Committee determined that the land use planning aspects of coal gasification and the zoning and plant siting required would be high priority studies and should be studied by the Natural Resources "A" Committee for its recommendations.

The Resources Development Committee further determined that it would be appropriate for the Natural Resources "B" Committee to review the State's water appropriation law, water and air quality standards, the necessity for a state environmental impact statement, and the desirability of a Department of Natural Resources for the State.

The Resources Development Committee reserved three areas of study for itself. The first of these was the need for increased health facilities and emergency services and the effect of coal gasification and coal-related industries on the State's social institutions. Secondly, the Committee reserved the study of surface mining and the reclamation of strip mined land. Lastly, the Committee reserved a study of coal leasing practices and surface owner rights.

For a report of the recommendations on the recommended studies which were assigned to other committees, the reports of these individual committees should be reviewed.

In response to the Resources Development Committee's first reserved study relating to health facilities and the effect of coal development on the State's social institutions, the Committee required a detailed socio-economic assessment to be submitted to the Committee pursuant to the conditional water permit. Michigan Wisconsin Pipe Line Company retained Woodward-Envicon, Inc., to perform the socio-economic assessment in addition to the preparation of an environmental impact statement which is to be submitted to the Federal Power Commission.

The socio-economic report submitted to the Resources Development Committee concluded generally that the impact of the first gasification plant would not be detrimental, but, rather, the overall impact would be beneficial to North Dakota. Specifically, the conclusions of the Woodward-Envicon socio-economic assessment were:

1. That tax revenue generated during construction and operation of the project would exceed the identified plant-related costs incurred during construction and operation.
2. In most cases during the construction phase, the local communities will be able to accommodate the increased population and the resultant service demands if a portion of the

project generated taxes are partially redistributed to the appropriate local jurisdiction in the project impact area.

3. That when the plant is operational, the worker generated tax revenue should be sufficient to maintain the local service demands in the long run. The plant generated taxes should help improve the services.
4. The potential number of families that may be asked to relocate from the plant mine site will be less than 25 families.
5. Increased opportunities for high paying jobs should help reduce the current out-migration of youth.
6. Unless a large number of housing units are constructed, intermittent shortages of housing are likely to occur during the construction period.
7. The development of a coal gasification plant should have a positive economic effect upon the baseline region by increasing the employment opportunities and income flows.
8. The additional income flows will lead to increases in retail sales and service receipts in the plant baseline region.
9. There will probably be a rise in wage and price levels within the baseline region during the construction phase due to the increased income flows and the relatively high wages to be paid to the project employees.
10. Some existing farm or range land will be temporarily removed from agricultural production until the reclamation process is complete. It appears that the forecast reduction in sales of agricultural products will be minimal in comparison to the current regional agricultural sales. A valid projection of long-term loss of agricultural productivity on the reclaimed land cannot be made until the reclamation process has been adequately established.

Although significant expansions will be necessary in the areas of education, water supply, sewers, and medical facilities, the local communities in the project impact area will be able to provide the required services if tax revenue is adequately redistributed and effective planning is implemented.

12. During the construction phase, obtaining the necessary educational and medical staff may prove difficult due to the short-term requirements for staffing the expanded facilities. However, with adequate planning and financial support, the majority of staff should be obtainable.

13. With the influx of construction workers, the local road networks will experience an increased traffic flow. Although this may lead to traffic congestion during rush hour commutation, the traffic flow should not exceed the capacity of major corridor routes.

14. Although the frequency of alcoholic-related crimes and disorderly conduct may increase in the project impact area, the rise in uniform crime report rates should not be significant. With the projected increase in police protection and security guards at the plant site, the increase in crime should be not greater than that resulting from normal population growth and will be manageable if adequate planning and financial aid is provided to the local police enforcement agencies.

The Committee offered the general public an opportunity to make comments on the socio-economic assessment submitted by Woodward-Envicon. The comments were generally of a constructive criticism nature and pointed to what the speakers felt generally were shortcomings of the report. The Committee was told that most of the remarks made were valid assessments of what needs to be done before the "socio economic assessment" becomes a completed environmental impact statement. Furthermore, the socio-economic assessment is a preliminary assessment which can be used in a preliminary manner by the 1975 Legislative Assembly to develop policy. The Committee recognized that there are many areas which must be studied in greater detail. With these events, the Resources Development Committee accepted the Woodward-Envicon socio-economic assessment.

In response to its second reserved study on surface mining and the reclamation of strip mined land, the Chairman appointed a subcommittee consisting of Senator Robert Stroup, Representative Karnes Johnson, and Public Service Commissioner Bruce Hagen. The Chairman of the subcommittee was Senator Stroup. The subcommittee did not submit a formal report to the Resources Development Committee, but Senator Stroup opted to introduce a privately sponsored bill which would amend the current reclamation law.

In response to its third reserved study relating to coal leasing practices and surface owner rights, the Resources Development Committee heard public testimony to determine what the problems were in the area and to determine what, if anything, could be done legislatively to resolve these problems.

The interested landowners and area citizens responded by enumerating problems which, to a large extent, indicated dissatisfaction with the terms of leases which were already in effect. The Committee was made aware of the problem of the person

who owned the surface of the land separate from the mineral estate. It was pointed out that the surface of the land might be disturbed by strip mining without the consent of the surface owner. The Committee recognized that any recommended legislation, in order to be constitutional and valid, cannot impair the obligation of contract nor can it be interpreted to take any private property without compensation, except pursuant to a valid exercise of the police power by the State.

The Resources Development Committee is recommending three bills to the Legislative Council which relate generally to the terms of leases executed after the effective date of this Act and to surface owner rights. The first of these Acts would be known as the "North Dakota Coal Leasing Practices Act". Section 1 of the Act gives the legislation its name. Section 2 of the Act points out that the Legislative Assembly is attempting to exercise the legitimate police powers of the State in order to protect the economic welfare of North Dakota citizens who rely for their livelihood on agricultural production, and further, to protect the agricultural economic base of North Dakota. The section states that it is in the public interest that certain terms and conditions of coal leases be regulated so that the people of North Dakota may receive reasonable and fair terms for the leasing of their coal and so that unfair terms in coal leases can be controlled and eliminated. The section points out that it is the intent that this section only apply to coal leases entered into after the effective date of the Act.

Section 3 is the definition section of the bill.

Section 4 statutorily recognizes the common practice in the industry of using a sight draft or other negotiable instrument as consideration for execution of a coal lease and further authorizes the dishonor of the sight draft only when there has been a bona fide failure of title. Section 4 also authorizes either party to a coal lease to cancel the lease for up to 15 business days after the day on which the lessor executes the coal lease. It requires that notice of cancellation shall be given and be effective when the notice of cancellation is mailed to the other party to the lease.

Section 5 of the bill draft provides for a primary term of 20 years for a coal lease unless coal is either mined or under permits within the 20-year period. The section also authorizes the use of an option to renew the lease at the end of the primary term. Such option to renew allows the lessor the right to renegotiate the bonus and royalty terms of the lease at the time of the exercise of the option. If the parties can't agree on new bonus and royalty terms, the lessor can bring an action in district court to determine what the new terms will be. To determine the new terms, the court is required to consider the

increase or decrease in the consumer price index since the date the lease was issued and set new bonus and royalty terms accordingly.

Section 6 requires that all advance royalty provisions contained in a coal lease be explained specially to the lessor before he signs the lease. It also requires that the lessor execute an acknowledgement indicating his knowledge of the presence of the advance royalty provision. If the advance royalty acknowledgment is not present and signed by the lessor, the advance royalty provision shall be void. The acknowledgement must be printed in raised type on the coal lease and it must refer the lessor to the exact provision of the lease which permits advance royalty treatment of payments.

Section 7 requires that all leases executed after the effective date of the Act provide for royalty payments of 15 percent of the average price per ton of coal or 25 cents per ton, whichever is greater. This section also provides that any lease which is required to contain the percentage royalty provision but does not contain it, shall contain an implied royalty payment provision of 15 percent.

Section 8 of the recommended bill requires each coal company which produces 100,000 tons or more of coal per year in North Dakota to report the price received or to be received for such coal to the State Tax Commissioner. The information received by the Tax Commissioner shall be used to compute an average per ton price of coal produced in North Dakota. The average per ton price of coal is to be used as a basis for determining the amount due under the percentage royalty provision. The Tax Commissioner will also have the duty to widely disseminate the average price per ton of coal as determined by his office. The Committee recognized that some mineral owners may be dissatisfied with this average price arrangement if their coal is of above average quality or if, because of unusual cost of mining per ton of coal mined, marginal coal beds may not always be leased.

Section 9 provides that coal lease terms regulated by this Act are absolute and unwaivable by either party.

Section 10 is an emergency section.

The second of the Resources Development Committee recommended bills relating to the terms of leases and surface owner rights is known as the "Surface Owner Protection Act". Section 1 of the bill draft gives the Act its name.

Section 2 states the findings of the Legislative Assembly which are the basis for the Act. The findings recite that the State is making an attempt to validly exercise the police power of the State in

order to protect the public welfare which is dependent on agriculture and to protect the economic well-being of individuals engaged in agricultural production. The Legislature further finds that there is an abundance of minerals in North Dakota which can be used for production of electricity, synthetic natural gas, and other forms of energy, and that these forms of energy are needed by the rest of the Nation. Thirdly, the Legislative Assembly recognizes that mining development may temporarily interfere with agricultural production within the State.

Section 3 is entitled purpose and interpretation and it states that the purpose of the Act is to provide the maximum amount of constitutionally permissible protection to surface owners who have minerals underlying their land from the undesirable effects of strip mining to which they have not consented.

Section 4 is entitled applicability and states that the Act places certain requirements on the holder of the mineral estate or the mineral developer and on the Public Service Commission, regardless of the means used to separate the mineral estate from the surface estate.

Section 5 is the list of definitions included within the Act.

Section 6 is entitled "written notice and consent required before permit to strip mine land may be issued — exception". This section is directed to the Public Service Commission and requires that the mineral developer who desires to strip mine land must obtain the consent of the surface owner of the land which will be disturbed before the Public Service Commission may issue a permit to strip mine. The consent of the surface owner may be manifested either by an express statement of consent or by implied consent. The implied consent would come from the surface owner executing a lease for the mining of the minerals under his surface or from a surface lease executed by the surface owner and running to the benefit of the coal developer. If the surface owner refuses to give consent after negotiation with the mineral owner or lessee, the mineral owner or mineral lessee may bring an action in court to determine the amount of loss the surface owner will incur. Once it is determined what the surface owner's damages will be, the court may issue an order which will permit the Public Service Commission to issue a permit to strip mine if the surface owner is compensated in accordance with the Court's determination of damages. It is the intent of Subsection 5 of this section that the consent of the court may be substituted for that of the surface owner. Section 6 further provides that the same consent requirements would be mandated when a permit to strip mine land is amended to include

additional land. In all of the situations under this Act, the mineral developer will be required to give notice to the surface owner sufficient to disclose the plan of work and operations to enable the owner to evaluate the extent of land disturbance on his use of the property.

Section 7 is entitled surface damage and disruption payments. This section requires the mineral developer to pay the surface owner annually the amount of damages sustained by the owner for loss of agricultural production caused by the surface mining activity, if it can be shown that the land disturbed has regularly been used for agricultural production. The section leaves the parties free to determine the formula for the determination of the damages. The payments must continue until the land has been restored to the level of agricultural productivity required by the plan submitted pursuant to Chapter 38-14. This contemplates that the payments shall continue until the surface is reclaimed and the land is released from the reclamation bond. The second subsection of this section requires the mineral developer to pay the owner of a farm building the fair market value of the farm building or the entire cost of removing the farm building to a location where the mining operation will not come within 500 feet of such building or buildings. This payment would be required any time a surface mining operation comes within 500 feet of any farm building. The rights granted to the surface owner under this section are absolute and unwaivable.

Section 8 is entitled financial obligation to reclaim. This section declares it to be the financial obligation of the mineral developer as defined by this Act to pay the entire cost of surface reclamation necessitated by the developer's mining operation. It provides further that if a mineral developer does not start reclamation within one year after the completion of the mining operation, the surface owner may undertake to perform the surface work himself or contract to have it performed. If the surface owner undertakes the work himself or contracts to have it done, he may recover any amounts of money expended to accomplish the reclamation to include the reasonable value of his time spent performing the work. This section further estops the owner from later denying that the work was adequately performed if he performs the work himself. However, it does not require that the Public Service Commission release the reclamation bond in the event that the surface owner performs the reclamation work himself. Lastly, the section gives the surface owner the right to recover any sums due under this section and authorizes reasonable attorney's fees to be awarded to the surface owner in addition to other sums determined to be due to him.

Section 9 of this Act is an emergency provision.

The third recommended bill draft in the area of leasing practices and surface owner rights is a recommended new section numbered 47-10-25 which would define the term "minerals" or the phrase "all other minerals" in a deed, grant, or conveyance of the title to property executed after the effective date of this Act. The thrust of the bill is that the above-quoted words shall be interpreted to mean only those minerals specifically named in the deed, grant, or conveyance and their compounds and byproducts.

REGIONAL ENVIRONMENTAL ASSESSMENT PROGRAM

In February 1974, representatives of Battelle-Columbus Laboratories were invited to appear before the Resources Development Committee to discuss the concept of regional development planning and planning for the utilization of non-renewable natural resources. The Battelle representatives told the Resources Development Committee that Battelle-Columbus Laboratories had a conceptual system which is designed to use environmental, economic, and societal information and data which are already available or which could be collected. From this preliminary baseline, specific additional information needs can be identified and relationships among existing conditions, environmental and economic objectives, and the regional potential for development can be derived. In addition, alternative activities with future growth potential can be evaluated relative to regional objectives and constraints.

The Resources Development Committee was further told that two important products will stem from the application of such a system: one is a continually developing baseline assessment of environmental, economic, and social conditions in the region; the other is a list of potential development activities which will contribute to the regional objectives within the limitations of the regional ecological, social, and economic conditions. In short, it would reliably predict the impact or results of changes and developments before they occur in order that state and local governments as well as citizens can intelligently judge whether the change or development is desirable or unacceptable.

In order to further study the concept embodied in the system proposal, the Resources Development Committee authorized the Legislative Council to contract with Battelle-Columbus Laboratories to structure a Regional Environmental Assessment Program (REAP) which will identify the requirements for a regional baseline and environmental, economic, and social assessment system for North Dakota. The system was designed and presented to the Committee on October 7, 1974, and a structure for the ongoing program was submitted at that time also. Copies of this report are on

file in the Legislative Council office. Because of its complexity, the Resources Development Committee at that time only adopted the concept of REAP. The Chairman of the Resources Development Committee appointed a special committee of people from the state universities, the Executive Branch of the State Government, and the Legislative Branch of State Government to review the Battelle report and make a recommendation to the Resources Development Committee on the structure for the system. The special committee consisted of Representative Bryce Streibel, Chairman, Dr. Sugihara of NDSU, Dr. Koenker of UND, Mr. Murray Sagsveen of the Governor's office, Senator Robert Stroup, Mr. Jack Neckels of the State Planning Division, Mr. C. Emerson Murry, Director of the Legislative Council, and Mr. Willis Van Heuvelen of the State Health Department. The special committee met and made recommendations on the structure of the system and also recommended a bill to fund the system. The Resources Development Committee subsequently adopted the recommendations of the special committee. The substance of the recommendation on the structure of REAP for North Dakota is:

1. That the Regional Environmental Assessment Program should be initiated within the framework of the Legislative Council, and after the program is operational (in two or four years), it should be transferred to an executive branch department. The program should be in the Legislative Council at first so that the system can draw upon all areas of government and be designed to be of assistance as a tool of the Legislative Assembly in making decisions related to the level of resource development which will be acceptable.
2. That the Regional Environmental Assessment Program should have a project director who would be on the staff of the Legislative Council and who has advanced training in a suitable field.
3. That the Regional Environmental Assessment Program should also have an assistant project director who could initially be a Battelle-Columbus Laboratories staff member living in North Dakota.
4. That a Resource Research Committee, which would be a statutory committee of the Legislative Council, would serve as a steering committee for REAP. It would be appointed by the Legislative Council and would be composed of members of the Legislative Branch of State Government, members of the Executive Branch of State Government approved by the Governor, representatives of the University of North Dakota and North Dakota State University, and private citizen

membership if the Legislative Council so desires.

5. That North Dakota expertise presently available in the universities of the State and within other areas of State Government should be used to collect baseline data, design a research outline, and perform the research work wherever it is determined by the steering committee that such expertise exists or can be acquired. The steering committee should be permitted to solicit expertise from without the State if such expertise is not present within the State or if the expertise is needed as a scientific review of work being performed by in-state experts.
6. That the Legislative Assembly should fund this concept and structure at the level of \$2 million through the budget of the Legislative Branch and that the portion of the legislative

budget which is to be used to fund this project carry an emergency clause.

7. That additional funding may be solicited, accepted, and expended by the Resources Research Committee from any Federal Government source which is or may become available.

The Resources Development Committee recommends approval by the Legislative Council of a bill which would provide for an additional section to the legislative budget carrying a \$2 million appropriation with an emergency provision to initiate and fund the development of the REAP. The bill would statutorily establish the Resources Research Committee as a Committee of the Legislative Council and expresses the intent of the Legislative Assembly to establish a flexible structure within the framework of the Legislative Council for this Committee to operate.

GOVERNMENTAL IMPACT COSTS OF ENERGY DEVELOPMENT

A special committee for review of the cost impact of coal development on State Government was created by the Chairman of the Legislative Council on October 8, 1974.

Members appointed to this Committee were: Senator Evan Lips, Chairman; Representatives LeRoy Hausauer, Charles Mertens, Ernest J. Miedema, Oscar Solberg.

The purpose of the appointment of the Committee is to allow development of recommendations for submission to the Appropriations Committees regarding the handling of any overlapping or duplicating requests which have been included in state department and agency budgets as a result of the impact of energy development, and to permit the Legislative Assembly to appraise the state costs that will probably occur during the next biennium as a result of the development of energy-related industries in the State.

At the November 6, 1974, Committee meeting, the Committee reviewed information and heard reports from the many state departments and institutions reporting amounts included in their budget request to the next Legislature relating the work required of their offices because of coal and other energy development. Exhibit "A" is a summary of the information presented to the Committee. The exhibit indicates impact costs for the state agencies, departments, and institutions included in the review amounting to an estimated \$14,357,219 during the next biennium, with \$8,554,890 to come from the State General Fund. This report contains supporting information regarding the costs included in Exhibit "A", which is attached to this report.

Such amounts were identified and estimated by the state agencies and departments, and, except as noted, have been included in the budget request of each agency. The following report may not be an all-inclusive analysis of all agencies which will incur additional costs or all costs that might be incurred by the agencies, departments, and institutions listed because of the lack of a program budget system to accurately report program costs and since such amounts are based, for the most part, on voluntary agency estimates and projections. However, we believe it includes most of the impact costs and does provide a basis to begin appropriate budget review of energy development-related costs.

The report of the Special Committee on Governmental Impact Costs of Energy Development was submitted to the Legislative Council at the biennial meeting of the Council held at Bismarck. The report was adopted for submission to the Forty-

fourth Legislative Assembly by the Legislative Council in November 1974.

Department of Agriculture

The Department of Agriculture requests \$35,628 including \$7,200 in fees and services for a coordinator of agriculture-coal research. The department believes that reclamation of mined lands, siting of transmission lines, use of water and air, and water pollution because of coal development may pose real problems for agriculture in North Dakota. The coordinator would carry out the department's program of constantly assessing the impact of coal development on agriculture.

Attorney General

The Attorney General is proposing three new positions whose duties will in part relate to the increased work created by coal gasification and other energy development. The positions are an environmental attorney, a legal secretary, and an administrative aide. It is estimated that the legal secretary will be spending 75 percent of her time on energy development activity while 25 percent of the administrative aide's time will be devoted to such work. The total cost of the proposal is \$110,164 with \$53,614 for salaries, \$4,800 for fees and services, \$1,750 for equipment, and \$50,000 for a contingent fund.

The attorney would prosecute in litigation, when appropriate, all violations of air, water, and land pollution referred for action by the Department of Health. He would review all proposed air, water, and land pollution control regulations and assist in providing opinions on the legal sufficiency of existing pollution control regulations and statutes. When appropriate, he would defend in litigation brought against the Department of Health or other state environmental protection agencies.

Badlands Human Service Center

The Badlands Human Service Center estimates costs of \$311,720 as a result of coal gasification and other energy development in the southwest region of the State. The justification for such amounts is as follows:

One variable which makes planning difficult is coal development and projected population increase. In order to begin planning for anticipated population increases, five outreach counselors and five part-time secretaries will be needed. The counselors would deal primarily in the areas of crisis intervention, individual, marital and family counseling, dealing with problems associated with alcoholism, child

neglect, etc. It appears the development will first hit Dunn County; therefore, it may be necessary to have two outreach counselors stationed in that county. The intent is to have sufficient flexibility to place the counselors where they are needed depending on the need for services.

An additional alcohol-drug counselor is requested as a specialist to provide direct services and technical assistance. With increased problems there will be a need for two additional staff to assist with inpatient and adult day care. A community organizer-social planner will be needed to survey needs and help research service programs.

The following impact costs are being projected for the next biennium for the center: five outreach counselors and clinical help, \$198,201; a community organizer, \$34,431; and alcohol-drug counselor, \$22,632; a mental health technician, \$14,145; and an occupational therapist assistant, \$13,496. In addition, \$28,815 is requested for travel, equipment, etc. One hundred seventy-one thousand four hundred forty-six dollars of the \$311,720 is anticipated from the Federal Government, \$118,454 from the

State General Fund, with the remaining amounts from local sources.

District Courts

The District Courts are requesting a judgeship at a cost of \$36,475 for the Fourth, Fifth, and Sixth Judicial Districts (Bismarck, Jamestown, Minot, and Mandan). This is one of two judgeships being proposed as a result of an analysis of trends in case filings and judicial workload. This judge would sit in the appropriate district as required by the respective workload. Increased and complex litigation due to energy development activities is anticipated for the three judicial districts mentioned. It is estimated that approximately 50 per cent of his time will be spent on coal-related matters. The State would pay for his salary and certain travel costs. Other costs are borne by the counties in which the judge presides.

State Forest Service

The State Forest Service is requesting two new positions for which the following areas of work are being planned:

Activity	Workload Analysis	
	District Forester	Forestry Aides
Natural Resources Inventory and Mine Reclamation Assistance	50%	60%
Rural Fire Protection Assistance	30%	30%
Urban Forestry Assistance and Woodland Tax Administration	20%	10%

The projected cost of their activities relating to natural resources and mine reclamation is as follows: salaries and wages, \$28,510; and \$12,230 for other support costs, for a total of \$40,740.

Game and Fish Department

Coal development, West River Diversion, flood control projects, Garrison Diversion, and other projects all require evaluation by the Game and Fish Department for fish and wildlife habitat changes. To carry out such work, the department is proposing an environmental specialist position. To fill such position they propose to hire a game and fish biologist experienced in evaluating public works. He would work closely with such agencies as the Water Commission, State Highway Department, Corps of Engineers, Soil Conservation Service, Bureau of Reclamation, and the coal and power companies. It is estimated that 50 percent of his time would be devoted to coal development-related matters. Costs for such activities, including salary, are projected at \$16,025 for the next biennium. The department estimates that the cost of funding these ongoing departmental efforts will be \$16,000 for the 1975-77 biennium.

Geological Survey

The Survey has initiated a program directed toward the determination, in detail, of the geology of the overburden in proposed mining areas. This knowledge is essential to the design of reclamation procedures that will assure the most rapid return to maximum productivity of mined land. Clearly, the design of reclamation plans for individual mines is the responsibility of the mining company, not the State. It is, however, essential that the State has at its disposal the information necessary to prepare general guidelines for reclamation procedures. Since little is presently known about the type of "soil design" and "landscape design" reclamation that will be required, a period of continuing study will be necessary to assure that information is available to update the reclamation guidelines. In addition, the State will need information from individual mine sites to permit evaluation of the reclamation plans proposed by the companies.

Little accurate detailed information on the lignite reserves in North Dakota is available to the State. The available information is generalized, both in terms of the amount of coal actually present and in terms of details of the location of that coal. Moreover, available information on overburden in the proposed mining areas is even less satisfactory. Because the geology of each potential area of coal development is different in detail, and in some areas unique, the materials that will be disturbed and replaced differ from site to site. As a result, the reclamation techniques and plans must be different to assure optimum restoration of productivity for each site. It is, thus, vitally important to know the

detailed distributions and characteristics of the material overlying the coal. Without this type of information it is very difficult, if not impossible, for the State Government to formulate informed policy and to take an active, constructive role in guiding any lignite development that may take place. So long as this information is not available, the State Government is forced to react to, rather than direct, any kind of development activity.

The Survey estimates that approximately \$133,903 of the proposed budget is needed to fund ongoing coal development-related activities. An additional \$104,458 is being requested for the following new positions for work related to coal development: a petroleum engineer, two geologists, a laboratory technician, and a secretary. One hundred four thousand one hundred ninety-eight dollars in additional funds are requested to cover necessary support costs for these positions.

In addition to activities encompassed within the Survey's appropriated funds budget, it is also involved in a coal reclamation study funded by the Old West Regional Commission. It expects \$48,000 will be received for this study during the next biennium. Approximately \$200,000 in other federal funds for coal development projects is also expected during the next biennium.

Governor's Office

The Governor's Office is requesting funds in its budget for a natural resources coordinator and additional clerical assistance. This coordinator would be responsible for developing and coordinating legislation in regard to the conservation, wise utilization and preservation of North Dakota's natural resources, including but not limited to the coal development issue, strip mining, reclamation, air and water pollution, recreation and wildlife management, parks and forest resources, and historic and cultural activities. The coordinator would be responsible for coordinating activities of the counterpart federal agencies that have impact upon natural resources. This shall require the coordinator attending, participating, and serving as the Governor's designee at meetings such as the Natural Resources Council, legislative committee meetings, and federal, state, and local meetings relating to natural resources. It is estimated that 75 percent of the coordinator's time and 50 percent of the secretary's time would be spent on coal development activities. The amount included in the budget related to such efforts will be: salaries and wages, \$36,000; and fees and services, \$2,000; for a total of \$38,000.

Health Department

The Health Department has two program areas, environmental control and pollution control, which will be affected by coal gasification and other energy

development. The basic objective of the air, land, and water pollution control programs is to prevent pollution before it occurs and to work with known sources of pollution to establish compliance with schedules for abatement of existing conditions.

Planned coal, water, irrigation, and general development in the State has already placed a tremendous burden on the personnel in the department's environmental programs. Because of the increased workload, the department is requesting the following new positions:

Water Pollution [Water, Waste Water, and Solid Waste Programs]

Position

Area of Work

Environmental Control Engineer I

Public, semi-public, and private water supplies

Environmental Control Engineer I

Radiological health and trace metal monitoring

Sanitarian IV

Solid waste disposal, including consultation on municipal and industrial solid waste disposal

Environmental Control Engineer I

Permit compliance, and municipal industrial waste facilities inspections

Limnologist, Biologist, and Fieldman

This team would be involved in stream and lake pollution surveys, waste water biological treatment plant studies

Chemist and Laboratory Technician

Laboratory analysis of municipal and industrial waters and waste waters

Clerk-typist (2)

Additional secretarial staff for the water pollution control program

It is estimated that approximately 60 percent of the water pollution control program workload will be related to coal and other energy development.

Air Pollution Control Program

Position

Area of Work

Engineer II

Report review and preparation relating to permits for construction and operation of all new or expanded plants

Engineer I (4)

Evaluate and measure air quality

Chemist II, Laboratory Technician III, and Laboratory Technician II (2)

Perform and interpret laboratory tests on air samples

Data Analyst

Expedite and be responsible for data entry, retrieval, and use

Clerical (3)

Additional clerical help for this program

The department estimates that 90 percent of the workload for the air pollution control program will be coal development-related.

The department estimates the salary cost for the coal and energy development-related work to be \$612,000. Support costs for such work is estimated at \$187,254, for a total of \$799,254.

Highway Department

The Highway Department believes that it is reasonable to expect that the department will be asked to furnish data and technical assistance, and to conduct surveys, studies, and reviews of reports in greater depth and detail commensurate with the increasing activities in the areas of development. Based on its judgments and past experience with the Defense Department's missile projects, and recent work relative to current studies, the department estimates a probable cost per plant site impact area of \$40,900. This includes salary and other support services costs, technical services such as surveys, traffic surveillance, engineering, and technical evaluations of geometrics, structural adequacy, safety, mapping, aerial photography, and technical assistance to counties, cities, and other governmental agencies. Assuming that development in 1975-77 may be started on five additional plant sites, the impact on the department would be approximately \$200,000.

The only highway construction project which, at this time, appears may become active as the result of power generation is the highway separation required on Highway 83 for the United Power Association (UPA) plant near Underwood. The UPA power plant construction is beginning at this time. In order to complete the highway project approximately at the same time as the power plant, such construction will need to be started during the next two-year period. The estimated cost to the department for this project is \$140,000. These costs have not been included in the proposed budget.

Assuming up to five sites are being activated, it is reasonable to expect that approximately 30 miles of state highways and local roads will be used as construction roads per plant, or about 150 miles. The costs for the extra maintenance, restoration, or resurfacing could vary from as little as \$50,000 per year to over \$1,500,000.

State Historical Society

Included in the 1975-77 budget of this agency is a request for authorization for expenditure of \$35,675 in funds received from other sources principally for archaeological survey and excavation in affected areas principally related to coal and associated development. The work would be done under contract with companies producing the impact and would provide basic data for impact statements as well as the ability to conduct detailed investigations on sites which would be destroyed by activities of the company. Of this figure, \$26,275 is in the area of salaries to hire archaeologist and crews, \$5,000 for supplies and materials, and \$4,400 in fees and services.

In addition, the Historical Society is requesting authorization for expenditure of \$118,102 in federal funds for historical and archaeological survey and planning and archaeological excavation for salvage in cases of last resort. Portions of this will be applied toward impact as the result of coal development, portions will go toward the statewide inventory as required under the National Historic Preservation Act of 1966, and other funds will be utilized toward impact in other areas affected by federal agency construction projects or federally licensed projects. Of this sum, \$101,825 is in salaries, \$7,000 in supplies and materials, and \$9,277 in fees and services. Increasing involvement in review and input for environmental assessments and impact statements is seriously affecting the workload of this agency, and these funds will assist greatly in meeting responsibilities related to development of the State's resources and impact upon the historical and archaeological resources.

Department of Labor

Due to increased workload in the area of wage claims, minimum wage violations, equal pay,

discrimination, and employment agencies, the Department of Labor is proposing that two field personnel be added to the staff. It is estimated that one of the additional personnel, who will be based at Minot, will spend approximately 50 percent of his time on cases in the coal development impact area. The projected cost for such activity is: salaries and wages, \$10,000; and \$2,500 for fees and services, for a total of \$12,500.

State Laboratories Department

The Laboratories Department has not budgeted any additional funds for increased activity resulting from coal and other energy development. However, departmental personnel believe that, in the event of rapid development, it would need additional field and office personnel. The projected cost for the increased workload is \$62,500 for salaries and wages and \$37,500 for supporting services, for a total of \$100,000.

Law Enforcement Council

The Law Enforcement Council reported that the following grants from Law Enforcement Assistance Administration funds relate to increased law enforcement activity arising out of coal gasification and other energy development: Mercer County contract policing, \$84,000; McLean County contract policing, \$24,000; and increased activity in the juvenile courts in the impact area, \$40,000; for a total of \$148,000. The contract policing grants will be a continuation of grants currently approved by the Council.

Legislative Council

The Legislative Council has been heavily involved in resource development during the current biennium. It is envisioned that during the 1975-77 biennium several Council committees will again be reviewing resources development activity in the State. The projected costs for the next biennium for such committee activity and necessary staff assistance is \$360,352. Of that amount, a significant portion of the \$135,306 requested for new positions is attributed to resource development. The proposed positions are as follows: an expert in science and technology, a resource librarian, a statistician, and an attorney.

Special Legislative Project

Also recommended is a \$2 million appropriation for a special legislative project to develop an environmental assessment system. Such funds would be used for the purpose of establishing and carrying on research including scientific research in regard to North Dakota's resources and areas of governmental activity or responsibility for the purpose of assisting in the development of new laws, policies, and

governmental actions and providing facts and information to the citizens of the State.

Agricultural Experiment Station — NDSU

The Experiment Station is involved in certain projects currently which deal almost entirely with energy development impact. The projects which the Experiment Station sees continuing into the next biennium are:

Project No.	Title
ND 1909 . . .	Range forage production in relation to the environment
ND 1913 . . .	Impact of coal development on plant ecosystems in western North Dakota
ND 2520 . . .	The climatic resources of the north central region
ND 2532 . . .	Soil landscape characteristics affecting land use planning and rural development
ND 2534 . . .	Soil, landscape, and ground-water relationships in a prairie pothole
ND 2535 . . .	Implications of the atmospheric environment on coal development in western North Dakota
ND 3332 . . .	Impacts of coal development alternatives
ND 3336 . . .	Resource inventory and monitoring system in North Dakota
ND 4519 . . .	Coal overburden characterization and revegetation studies

For such ongoing projects, \$611,415 has been included in the 1975-77 budget.

Through an agreement with the State Planning Division, the following projects, which are in addition to those listed above, will be funded in the amount of \$181,643 under an Old West Regional Commission grant:

Project No.	Title
ND 4523 . . .	Chemical and physical characteristics of shaped mined land
ND 4524 . . .	Surface and root zone hydrology of shaped spoils
ND 4525 . . .	Plant establishment and culture on surface mined lands

In addition the Station plans the following new programs and is requesting the following new positions for the 1975-77 biennium:

1. Forage evaluation of reestablished biennial cost range and pasture
1— Assistant Professor, Botany-Animal Science
2. Spoil Bank Revegetation
1— Assistant Professor, Soils
1— Graduate Research Assistant, Botany
3. Rural and Community Development
1— Assistant Professor, Agricultural Economics
1— Graduate Research Assistant, Agricultural Economics

The biennial costs for the new assistant professors and the graduate assistants, and the necessary support services for such positions are projected to be \$297,195.

Cooperative Extension Service—NDSU

As part of its community resource development activities, the Extension Service plans to continue the following ongoing coal development impact projects during the 1975-77 biennium at a cost of \$94,951:

Project Titles and Projected Resource Allocation in Percentage

Title	Percentage
Comprehensive Planning	10
Land Use Planning and Zoning	20
Organizational Leadership	20
Community Services	20
Social Adjustment	15
Economic Adjustment	15
	100%

The projected cost for the following new projects under the community resource development program is \$233,009:

Project Titles and Projected Resource Allocation in Percentage

Title	Percentage
Comprehensive Development	5
Land Use Planning and Zoning	10
Community Services	15
Organizational Leadership	20
Environmental Impact	10
Social Adjustment	20
Economic Adjustment	20
	100%

To carry out the anticipated projects, the Extension Service is asking for five new positions: three area rural development agents, a communications specialist, and a secretary.

The area resource development agents would serve as liaison between the University and the local communities as well as other agencies working in the impacted areas. These agents with state staff assistance would assist with the sociological problems of population increase and people coming together from different cultural backgrounds.

The communications specialist is being requested because present communications staffing and workload will not permit the amount of staff time reallocation to provide the necessary communications support.

The timely dissemination of information by specialist staff partially depends on adequate communications staff support. A significant increase in program effort concerning energy development in North Dakota will require increased preparation of publication, news releases, and radio and television programming to disseminate research results to the public.

State Planning Division

It is estimated by the State Planning Division that approximately \$200,000 has been budgeted because of the intense interest in the development of the natural resources of North Dakota and the corresponding concern and understanding for the need for adequate and timely planning programs, which will serve as a guide for orderly development and sound economic growth for the State, cities and counties, and region. Such funds will provide for additional personnel and cover increased support costs. The new positions, the major efforts of which will be in the coal development activities, are: a director of environmental review, a resource specialist, a planning and research coordinator, an ecologist (intern), and necessary clerical assistance.

In addition, the Planning Division will be receiving funds from various sources for projects relating to coal development. The proposed projects and possible sources of funding are:

Old West Regional Commission	
Mined Land Planning Group (NDSU and Geological Survey)	\$ 250,000
Research on Potential Dangers of Trace Elements (Health Department)	400,000
Study of Legal and Regulatory Problems (UND Law School)	50,000

Surface Environment and Mining— USDA

700,000

(Development of a management information system to provide an adequate data base to assist in the analysis of impact problems intensified due to pending coal development, and other economic growth opportunities)

Total \$1,400,000

Public Instruction

The Department of Public Instruction indicates that its request of \$156.6 million for the Foundation Program for the 1975-77 biennium will be sufficient to cover 1,500 additional students resulting from the development of coal and other energy-related industries. If this number is correct, \$1,088,000 of the appropriation for the Foundation Program would be for this purpose. At the November 6, 1974, meeting of the Committee, the Committee by motion asked that this amount be included in the report. It is not expected that increased property taxes from the new industries will be collected during the next biennium to offset the additional costs that will be incurred for educating these students. The need for additional funds in the communities affected for school construction funds and supplemental per-pupil payments is under consideration, but budget requests for this purpose have not been submitted to the Executive Office of the Budget.

Public Service Commission

The Public Service Commission is given the following powers under the State's reclamation law:

1. To exercise general supervision and administration and enforcement of this chapter and all rules and regulations and orders promulgated thereunder;
2. To encourage and conduct training, research, experiments, and demonstrations, and to collect and disseminate information relating to strip mining and reclamation of lands and waters affected by strip mining;
3. To adopt rules and regulations with respect to the filing of reports, the issuance of permits, and other matters of procedure and administration;
4. To examine and act upon all plans and specifications submitted by the operator for the method of operation, backfilling, grading, and for the reclamation of the area of land affected by this operation;
5. To make investigations or inspections which may be deemed necessary to ensure compliance with any provision of this chapter;
6. To order the suspension of any permit for failure to comply with any of the provisions

of this chapter or any regulations adopted pursuant thereto; and

7. To order the stopping of any operation that is started without first having secured a permit and approval of the plan as required by this chapter.

The Commission's Reclamation Department assists in the administration and enforcement of this law. To fund the ongoing activities of that department, it is including \$88,611 in the proposed budget. In addition, the following new positions are being proposed for this department to handle the increased coal development activity: an assistant director of reclamation, a geology and mining specialist, a range management specialist, an agronomy specialist, and a secretary-librarian.

The Commission has included in the budget \$194,460 to cover the increased salary and other support costs.

Social Service Board

The Social Service Board is budgeting the following additional funds due to coal and other energy development activity in North Dakota:

Aid to Families with Dependent Children	\$1,503,400
Safeguard against possible adverse change in economic or social trend (200 cases at \$313.20)	
Medical Assistance	2,671,800
Safeguard against possible adverse change in economic or social trend (530 cases at \$210.05)	
Community Services	236,237
Impact of possible adverse social trend	
Total	<u>\$4,411,437</u>

Such contingencies will be funded from the following sources: state funds, \$1,604,295; federal and county funds, \$2,807,142; for a total of \$4,411,437. The projections are based upon the impact experienced in development areas in Wyoming, Alaska, and Cavalier, North Dakota. The impact of the Grand Forks and Minot Air Bases also is used as a basis for the projections.

University of North Dakota

The University of North Dakota has budgeted \$15,000 per year for each of the following research bureaus due to anticipated activity related to coal

gasification and other energy development: Bureau of Governmental Affairs, Bureau of Business and Economic Research, Bureau of Educational Research and Services, Bureau of Mines, and Institute for Ecological Studies.

Such funds will provide for the following:

Salaries and Wages	\$132,000
6— Associate Professors (½ time)	
2— Secretaries	
2— Clerks	
Graduate Teaching Assistants	
Fees and Services	6,000
Supplies and Materials	12,000
Total	<u>\$150,000</u>

In addition, the bureaus will conduct research projects for which private and federal funds will be received. For example, UND is currently working on Project Lignite which is funded by the U.S. Office of Coal Research. It is estimated that approximately \$1.4 million will be expended on this project during the 1975-77 biennium.

State Board for Vocational Education

The 1975-77 State Board for Vocational Education budget request includes approximately \$210,890 that is directly related to new and expanded program needs resulting from increased manpower demands due to projected coal development. The new and expanded program areas include carpentry metal fabrication to include welding, truck driving, electrical, plant operators, and selected health occupations. In most cases it will be expansion of existing programs. The programs will be available primarily to post secondary students and adults.

The department indicates that the above dollar figure does not represent the total amount that will be expended to meet these increased demands. Many of the existing programs will provide skilled manpower for some of the new opportunities. Funds for continuation of these programs are also included in the budget request. It is difficult to identify an amount because conceivably all the programs could contribute skilled manpower.

State Water Commission

The State Water Commission anticipates an added workload due to energy development which

will include added water permit administration, area research and studies, and regional studies. The department estimates that it will spend \$91,836 during the next biennium on energy impact assignments to current staff. In addition, the department is proposing the following positions to assist in such work: a water resource engineer II, two water resource engineers I, a hydrologist, a hydrologist technician, a draftsman, and a clerk-steno.

The department estimates that \$59,250 of the salaries for such positions will relate to increased energy development activities. In addition, the commission has budgeted \$83,073 for other costs it may incur.

In regard to contract fund activity, the department anticipates added contract field test drilling and related work to inventory, monitor and study surface and ground water conditions in the impact area, and is budgeting \$100,000 for such purposes. An additional \$100,000 is earmarked for emergency studies and emergency assistance to entities in the impact area.

In addition to the agencies, departments, and institutions which made information available for this report, there are agencies which did not include moneys in their budget requests for additional services relating to coal and other energy development, but yet may request funds from the

Legislature in the event that the Legislature assigns them additional duties in that area. For instance, if the Public Service Commission should be assigned the responsibility to supervise energy conversion and transmission facility siting, additional costs during the next biennium could be as high as \$725,000, with \$555,000 to come from permit fees and \$170,000 from the State General Fund. Another instance relates to the Tax Department, should it be assigned the responsibility of administering a coal severance tax program. Another instance, for example, is the Director of Institutions' Office, which would in some instances be asked to provide space for some of the new employees listed in this report.

COMMITTEE RECOMMENDATIONS

The Committee recommends that the Governor's Office, the Office of the Executive Budget, and the Senate and House Appropriations Committees be presented the information contained in this report, and that an effort be made to avoid any unnecessary duplication that might be found in the above-mentioned budget requests. The Committee also asked that the Office of the Executive Budget advise the Appropriations Committees of the action taken in the Governor's Budget regarding the projects described in this report in order that state-level impact costs as actually approved and presented in the Governor's Budget can be ascertained.

**Analysis of State-Level Impact Costs for Coal and other Energy Development
as estimated by State Agencies, Departments, and Institutions
1975-77 Biennium**

Department	Cost Impact	State Funds (General Fund)	Federal and Other Funds
Agriculture Department	\$ 35,628	\$ 35,628	\$ ----
Attorney General	\$ 110,164	\$ 110,164	----
Badlands Human Service Center	311,720	118,454	193,266
District Courts	36,475	36,475	----
State Forest Service	40,740	30,962	9,778
Game and Fish Department	32,025	----	32,025
Geological Survey	590,559	342,559	248,000 1/
Governor's Office	38,000	38,000	----
Health Department	799,254	799,254	----
Highway Department	340,000 1/	----	340,000
Historical Society	35,675 2/	----	35,675
Labor Department	12,500	12,500	----
Laboratories Department	100,000 1/	100,000	----
Law Enforcement Council	148,000	----	148,000
Legislative Council	360,352	360,352	----
Special Legislative Project			
Environmental Assessment System	2,000,000	2,000,000	----
North Dakota State University			
Experiment Station	1,090,253	545,960	544,293
Cooperative Extension Service	327,960	244,167	83,793
State Planning Division	1,600,000	70,000	1,530,000
Public Instruction	1,088,000	1,088,000	----
Public Service Commission	283,071	283,071	----
Social Service Board	4,411,437	1,604,295	2,807,142
University of North Dakota	150,000	150,000	----
Vocational Education	210,890	210,890	----
Water Commission	434,159	374,159	60,000
Subtotal	\$14,586,862	\$8,554,890	\$6,031,972
Less: Amounts for Old West Regional Commission projects included in the amounts reported for the State Planning Division and those agencies who anticipate receiving such funds			
TOTAL	\$14,357,219	\$8,554,890	\$5,802,329

1/ These projected costs have not been included in the proposed budget of the agency or department.

2/ In addition, the department is budgeting \$118,102 in federal funds for historical and archaeological survey and planning, and archaeological excavation, a part of which may

be used on projects arising out of coal development, but the major portion of which will be used for a statewide inventory as required under the National Historic Preservation Act of 1966, and work related to other areas affected by federal agency construction projects.

STATE AND FEDERAL GOVERNMENT

House Concurrent Resolution No. 3051 of the Forty-third Legislative Assembly directed the Legislative Council to conduct an interim study on the aspects of the implementation, operation, and utilization of a municipal bond purchase fund in the Bank of North Dakota. House Concurrent Resolution No. 3043 directed the Legislative Council to study and review the functions and utilization of the State Communications system. Senate Concurrent Resolution No. 4035 directed the Legislative Council to determine what legislation is required for North Dakota to comply with the requirements of the Federal Environmental Pesticide Control Act of 1972.

These studies were assigned to the Committee on State and Federal Government, consisting of Representatives Earl Strinden, Chairman, Arnold Gronneberg, Oben Gunderson, Richard Hentges, Fern Lee, Robert Martinson, Ernest Miedema, Albert Rivinius, Earl Rundle, Charles Scofield; and Senators George Rait, Rolland Redlin, Claire Sandness, and James Smykowski.

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 Bismarck. The report and recommended legislation were adopted for submission to the Forty-fourth Legislative Assembly by the Legislative Council in November 1974.

MUNICIPAL BOND PURCHASE FUND

There are several reasons why the Forty-third Legislative Assembly found a need for this study. The reasons hold true even though there was evidence and testimony presented to the Committee indicating that many of the functions of a municipal bond purchase fund or a "bond bank" were already being performed by the Bank of North Dakota. Some of the smaller political subdivisions of the State of North Dakota, which have little or no access to the national money markets, have been unable to obtain adequate supplies of credit at reasonable rates of interest. Usually funds have been made available through the Bank of North Dakota, but the price received is a negotiated interest rate between the political subdivision and the Bank of North Dakota. It is questionable whether the political subdivision can receive the most advantageous interest rate when there is no willing buyer other than the Bank of North Dakota. In fairness to the Bank of North Dakota, it must be pointed out that one of the primary functions of the Bank is to produce a profit for the State of North Dakota, a function which is

not conducive to purchasing municipal bonds at low rates of interest and places the Bank in an inherent conflict of functions position. It would be more advantageous financially for the Bank to invest state funds in its possession in higher yield securities. Oftentimes the Bank must have large sums of money invested in low-yield, tax-exempt municipal securities. The holding of tax-exempt securities is of no advantage to the Bank as it pays no tax. At one time during the study, it was reported to the Committee that the Bank had \$14 million invested in municipal securities. The Bank is virtually forced to purchase many municipal bonds of a political subdivision, as the political subdivision needs the funds for a capital expenditure, and there is no other purchaser who is willing to bid on the bond issue.

The basic problem of the Committee was to find a way to make it possible for political subdivisions to have access to the national money markets at reasonable costs. If this problem were resolved, the political subdivisions would have the advantage of lower interest rates while the Bank of North Dakota would enjoy the incidental benefits of being relieved of the responsibility of having large sums of money invested in low-yield, tax-exempt municipal securities.

The Committee seriously considered two avenues of approach to the problem. The first of these was a "municipal bond insurance fund" and the second was a "municipal bond bank".

The concept of the **municipal bond insurance fund** is to create an instrumentality through which North Dakota municipalities could obtain insurance to guarantee their bond issues and thereby obtain a rating from a nationally recognized rating service on the bond issues to improve the marketability of the bonds. It was contemplated that the insurance fund itself would have a specified sum of money (i.e., \$1 million) in it to guarantee potential defaults and that this fund would be located within the Bank of North Dakota. The insurance fund would be rated by a nationally recognized rating service and the bond issues, which would be issued through the insurance fund, would have the benefit of the rating of the fund. The Bank of North Dakota would have been authorized to charge an insurance premium for the right to participate in the fund. The money in the insurance was to be provided from the undivided profits of the Bank and any North Dakota municipality legally authorized to sell bonds would be entitled to participate in the fund upon the payment of the premium and fulfilling the statutory prerequisites for the floating of a bond issue.

The concept of the **municipal bond bank**, as visualized by the Committee, is that the Bank of North Dakota would purchase bond issues of political subdivisions, much as is done now. The issues purchased by the bond bank would not have to comply with all the statutory prerequisites which would otherwise be needed before a bond issue could be sold, but the issue would be enforceable between the bond bank and the seller of the issue. Simultaneously, with the purchase of the small municipal issues by the bond bank, the bond bank would sell one large issue of bonds which would provide enough money to purchase several municipal bond issues and to provide for a reserve fund in case of default of any issue purchased by the bond bank. The sale of this large issue would negate the need for having large sums of state money invested in municipal bonds, as the money invested in the municipal bonds is investor money and not state money. Payments for the retirement of the bond issue sold by the bond bank would come from repayments of principal and interest of the bond issues bought by the bond bank. The interest rate of the issues bought by the bond bank would be the same as the interest rate of the issues to the bond bank so that the municipalities selling their bond issues to the bond bank would have the advantage of the lower interest rate derived by the access of the larger issue to the national money market. Each bond issue sold by the bond bank would have to be rated by a nationally recognized rating service.

Another advantage of the bond bank approach is that political subdivisions will save a large portion of the cost of marketing the bond issue, including bond counsel fees, bond printing, advertising the issue, putting out a prospectus, and getting the issue rated. The bond bank will incur these costs in floating a large bond issue, but the unit costs per thousand dollars of bond issue declines as the size of the issue increases. Each political subdivision participating would be expected to share in its proportional share of the cost of issuing the larger bond issue. A reserve fund would be established in the bank which will have enough money in it to make the payment for the large bond bank issue for any one year. The State would not be legally liable for default of the bond bank issue, but would have a moral commitment to make good any default which may occur.

After considering these two concepts, the Committee decided to direct the staff to draft a bill which would embody the concept of a municipal bond bank. The bill draft was prepared and presented to the Committee for discussion and amendment. The Committee recommends this bill for establishment of a municipal bond bank.

Section 1 of the bill recommended by the Committee sets out the title to the Act. The title is the "North Dakota Municipal Bond Bank Act".

Section 2 sets out the policy of the State relating to the use of municipal bonds. That policy, as established by the Act, is to facilitate the financing of public improvements by political subdivisions by assisting the political subdivisions in obtaining inexpensive financing for capital improvements and to provide a ready market for the bonds of political subdivisions.

Section 3 is the definitions section of the bill.

Section 4 provides for the creation of the bond bank and places that bond bank within the Bank of North Dakota.

Section 5 provides that no political subdivision shall be required to participate in the bond bank, but that such participation will be voluntary. A political subdivision which has a rating by a rating service which is higher than the rating received by the bond bank on a particular issue may find that it is more advantageous for it to sell its own issue on the private market, rather than participate in a bond bank issue. It may also find that it would be more advantageous to participate in the bond bank issue thereby saving the costs of preparing and marketing an issue.

Section 6 relates to lending and borrowing powers of the bond bank. It provides for the sale of municipal bonds of a political subdivision to the bond bank, if the Attorney General finds that the bonds are sufficient and legally enforceable. This is also intended to mean that it is not necessary for the bond bank to receive the opinion of a bond counsel before purchasing a bond issue from a political subdivision. The section permits the bond bank to hold the bonds purchased for as long as it finds it is necessary to do so. It also authorizes the bond bank to issue its own bonds payable from funds which are available to the bond bank and which are authorized or pledged for the payment of bond bank obligations. This section sets out very clearly that bonds issued by the bond bank are not a debt or liability of the State of North Dakota and that the State has no legal obligation to pay such liabilities in case of default. It also states that the full faith and credit of the State and the taxing power of the State shall not be used to support the bonds.

Section 7 is an enumeration of powers which the bond bank will need to operate. These powers include the power to make and enforce bylaws, rules, and regulations; to acquire, hold, use, and dispose of its income; to obtain personal property necessary; to charge and collect fees for the use of its services; to enter and enforce agreements to carry out the purposes of the Act; to purchase municipal securities of political subdivisions; to invest moneys not currently needed for loans to political subdivision; to establish procedures for application for participation

in the bond bank; to establish terms and provisions with respect to the purchase of municipal securities; to procure insurance; and to do other things necessary to carry out the express powers.

Section 8 provides that bond bank bonds must be issued pursuant to resolution of the Industrial Commission, which is the governing body of the bond bank as well as the governing body of the Bank of North Dakota. The resolution of the Industrial Commission would set the terms and conditions of the sale of each bond issue issued by the bond bank.

Section 9 provides for a pledge of revenue or other money made by the Industrial Commission to be a lien on the asset pledged for the benefit of the lienholder. No action by the lienholder will be necessary for him to perfect his lien.

Section 10 provides for the establishment of a reserve fund to be composed of moneys appropriated for the benefit of such fund, proceeds required to be deposited therein pursuant to any contract or resolution of the bond bank, or any other moneys the bond bank decides to deposit therein. The purpose of this reserve fund is for the payment of principal and interest on bonds issued by the bank and sinking funds established by the bond bank to retire bond issues as they become due. The amount that must be maintained in the reserve fund is an amount which will be sufficient to pay the principal and interest on all issues issued and outstanding for the year in which the largest payment is to become due. The maximum amount to be held in the reserve fund will be an amount not to exceed the formula limits permitted for tax-exempt status under Section 103(d) of the Internal Revenue Code. Money from the reserve fund can be removed from the reserve fund, but only to prevent default of the bond bank bonds and when the required debt service reserve is reduced because of the payment of bond issues. Before a bond issue may be issued, there must be either an adequate amount in the reserve fund to cover the debt service reserve, or the bond issue must be large enough to provide enough money for additional funds to be placed in the reserve fund to cover the debt service reserve. The last subsection of this section is a statement that indicates the intent of the Legislative Assembly to make funds available to replenish the reserve fund, should the reserve fund be called upon to make up for a default caused by the default of a political subdivision in paying for its annual principal and interest. This is merely a moral commitment for the State to back the bond bank issue.

Section 11 gives the bond bank permission to establish additional reserve funds or accounts necessary, in the opinion of the bank, to further the accomplishment of the purposes of the bank.

Section 12 precludes the possibility of personal liability on the part of any person or the members of the Industrial Commission executing bonds or notes pursuant to this Act.

Section 13 gives the bond bank the authority to purchase its own bond bank bonds out of any funds made available for that purpose.

Section 14 provides that the bonds issued by the bond bank are legal investments, regardless of the restrictions imposed by any other law.

Section 15 provides that the property of the bond bank and bonds issued by the bond bank shall be tax exempt.

Section 16 exempts all property of the bond bank from levy and sale by virtue of an execution. This is not intended to take away the rights of any bondholder to enforce a pledge or lien given by the bond bank pursuant to resolution.

Section 17 authorized the bond bank to secure insurance to insure the repayment of its bond issues.

Section 18 authorizes the bond bank to enforcement payment by any legal means against a defaulting political subdivision which has sold its bonds to the bond bank.

Section 19 provides that investments held by the bond bank pursuant to this Act must be in fully marketable form and that the bank must have documentation as shall be required in the municipal bond market.

Section 20 provides for the conclusive presumption of validity of all bonds or notes of the bond bank after those bonds or notes have been issued.

It is the intent of the State and Federal Government Committee to make the advantages available from the use of a bond bank available equally to the benefit of general obligation bonds and revenue bonds. It was recognized by the Committee that it may not be proper and advantageous for each issue of the bonds of the bond bank to contain both types of bonds, but it was felt that the bond bank proposal was flexible enough to provide the same type of assistance in the preparation of both types of bond bank issues and in the marketing of such issues. The market conditions will ultimately determine if the bond bank proposal can give assistance to revenue bonds as well as general obligation bonds. The Committee was aware that the Maine Municipal Bond Bank included revenue bonds within its portfolio.

STATE COMMUNICATIONS SYSTEM

The State and Federal Government Committee was asked to study the original functions the communications system was intended to perform, current responsibilities, services being performed, benefits from current operations, and to recommend any modification of functions, responsibilities, and operations which might improve the state communications system to the 1975 Legislative Assembly.

The Committee discovered very early in its study that it would be more accurate to acknowledge that there is no single "communications system" as indicated by the title to this section of the report, but that there are several individual "communications systems", each performing services which are addressed to a particular type of communications need or performing services for an individual communications user. The approach of the Committee was first an attempt to find out exactly what "communications systems" existed within the state and to determine more specific details on each of the systems.

Communications systems within the State and operated either by or for the State include: law enforcement radio circuits, law enforcement teletype system, weather and road information teletype emergency network, and highway emergency telephone system, all of which are operated from the Emergency Operations Center at Bismarck; a centrex system, which is the telephone system within the City of Bismarck serving the state government; CATS (Combined Automatic Telecommunications System) and WATS (Wide Area Telephone Service), which give state personnel in each of the 12 major cities access by direct dialing to all telephones within the State of North Dakota; Highway Department radio system, which consists of 36 radio towers and a radio console located at each of eight Highway Department District Offices and used primarily for maintenance of highways; Highway Department Teletype System, which consists of 10 private line teletypewriter 100 word per minute automatic machines located at eight Highway Department District Offices, State Radio, and Maintenance Headquarters, and used for administrative traffic and road information; Legislative WATS; Job Bank, which is now operated through the mails rather than over the wire; Library Exchange System, which provides a dedicated private line teletype circuit between the State Library Commission and libraries located in major cities, colleges, and universities and used for requests for books, records, tapes and other source material; Higher Education Data Transmission System, which is used to permit smaller state colleges to have access to the computer at the University of North Dakota.

After a review of these systems, the Committee decided to limit its study to major communications users and to major aspects of the communications systems. The major communications users subsequently considered were the Highway Department and State Radio. The major aspects of the communications systems subsequently considered were CATS and WATS.

The problems of State Radio involving the law enforcement radio network were emphasized to the Committee. It was pointed out that the level of use of the system was at the saturation point, and in emergency situations the system at times failed to get messages to their destination. It is a system in which all of the radio messages in the State are broadcast on one low-band channel. Because it is a low-band system, it is subject to interference from broadcasts from radios a great distance away which bounce off the ionosphere and are reflected into the State's radio receiver system and interfere with local radio transmission. There are over 800 individuals who have radios with access to State Radio including all major police departments, all sheriffs and deputies, the Federal Bureau of Investigation, U.S. Marshal, U.S. Border Patrol, U.S. Treasury Department, Bureau of Indian Affairs, Highway Patrol, Game and Fish Department, and other miscellaneous agencies.

The Highway Department has plans for upgrading its radio system because of problems with that system. The Highway Department is experiencing more frequent and more severe problems with the microwave and ultra-high-frequency equipment now in use. The problems include insulation falling off of wires and obsolescence. The equipment is 13 years of age and is of a tube-type rather than a solid-state variety. It has been very reliable in the past, but needed repairs are coming more frequently and the system is experiencing more down-time than in the past, in spite of the fact that the equipment has the benefit of an effective preventative maintenance program.

The current law enforcement teletype system consists of a two-circuit Bell Telephone 83A1 teletype network which is a 60 WPM non-polling, contention-type system. Each terminal has equal priority and may transmit a message at will. The two circuits consist of a western circuit and an eastern circuit, both of which terminate at State Radio in Bismarck. Any terminal on a given circuit can communicate with any other terminal, or group of terminals on his circuit directly without manual intervention. If a terminal operator needs to communicate with a terminal on the other circuit, the message is sent to the State Radio terminal and State Radio re-transmits the message on the destination terminal's circuit. The opinion was

expressed that this is an inefficient system and should be upgraded with faster equipment of a non-contention type and should have automatic message switching capability.

The Committee was also advised that Criminal Justice Information System (CJIS) could easily be incorporated into the teletype system. The Central Data Processing Division has a computer which could store the information but the computer lacks a communications front end. A small computer which could act as a communications front end for the computer at Central Data Processing could also act as a message switcher at State Radio to eliminate the manual message switching function now being performed there. The only other additional cost would be for the lines to tie the Central Data Processing Center with the message switcher-computer front-end.

The problems with the CATS and WATS systems were discussed and it was pointed out that the CATS system is generally satisfactory to major users, but that at peak usage periods of the day the WATS system is saturated with calls, many of which cannot be completed over the system. The question was raised of whether the Committee wanted to approach the problem by recommending additional leased lines or by recommending the adoption of a new system (such as a state-owned microwave) which would allow the State to supply the equipment and perform the communications function for itself, without the assistance of the Telephone Company. The Committee recognized that it may not be possible for microwave to perform a control circuitry function for the law enforcement radio system and at the same time provide for the carrying capacity for a system which would adequately service the state government's long distance telephone needs. In order to know if a state-owned microwave system could perform these functions, the Committee was told that it would have to have a microwave feasibility study performed. The Committee voted not to have this study performed and thereby killed the idea of a state-owned microwave system which would provide telephone service. It was pointed out to the Committee, that when complaints relating to the CATS and WATS system get severe, if funds are available, additional lines can be made available to supply the need. (Some additional lines were made available between Fargo and Bismarck during the biennium.)

From this, it can be seen that the Committee was, in a sense, forced to choose relatively early in its deliberations among the viable alternatives available to it. The Committee also decided early that upgrading of the communications systems, especially law enforcement communications would be recommended. The approach to the upgrading remained to be decided.

The Committee Chairman appointed a subcommittee consisting of North Dakota people who are knowledgeable in various aspects of the communications systems within the State. The subcommittee was asked to develop an upgrading plan which would take into consideration the needs of all the users which could effectively be worked into one communications system. The subcommittee recommended:

1. That State Radio and the Highway Department should continue to share the Highway Department tower sites and towers.
2. That State Radio and the Highway Department should continue to share maintenance teams and equipment on a fee-for-service basis.
3. That a high-band, multi-channel law enforcement radio network should be implemented for the upgrading of law enforcement communications. State Radio would use Telephone Company leased lines to reach the Highway Department District Offices and for central control purposes and from those District Offices the Highway Department and State Radio should use microwave to control the radio towers. The Highway Department and State Radio would be on different frequencies along the same paths.
4. That the law enforcement teletype system should be upgraded to include the hardware necessary for a CJIS and that a computer which can be a communications front-end for Central Data Processing and a message switcher for State Radio be obtained and installed.

Northwestern Bell Telephone Company (NW Bell) also submitted a plan for the upgrading of the State's communications system. The consensus of Northwestern Bell and subcommittee experts was that the substance of the two recommendations was the same, except for differences in the type of control circuitry to be used. The Northwestern Bell plan called for the use of leased lines from the Highway Department District Offices to the Highway Department radio tower sites. The debate among the members of the Committee and witnesses relating to the choices centered on cost and reliability. The Committee hired a consultant to make a recommendation among the two alternatives and to give the system its engineering design.

The implementing of a multi-channel law enforcement radio network to replace the current single-channel system, as recommended by the consultant, will cost, based on the most up-to-date estimate, \$1,689,087 for radio equipment to be

placed in law enforcement vehicles and for control consoles at State Radio Headquarters. Of this required amount, the Director of the Law Enforcement Council appeared before the Committee and offered to fund \$1 million of the equipment needs. This will leave \$689,087 which would need to be appropriated by the Legislative Assembly. This amount includes changes in the system design requested by the law enforcement users of the system. The Committee recommends that the law enforcement communications system be upgraded as recommended by the consultant, with the design changes suggested by the users, and that the Legislative Assembly fund this upgrading at the level of \$689,087, regardless of the type of control circuitry which is used.

After hearing the recommendation of its consultant, and testimony and evidence from others relating to the type of control circuitry, the Committee recommends that the adoption of the proposal for control circuitry submitted by Northwestern Bell in that leased lines be used to control the Highway Department radio towers, both for the State Radio law enforcement communication purposes and for the Highway Department radio communication purposes. The recurring charges necessitated by this recommendation are estimated to be \$452,883.40 per year or \$905,766.80 per biennium. It is to be noted that another \$52,293.24 will be expended from Highway Department funds annually for the Highway Department's share of the cost of the control circuitry. It is recommended that \$905,766.80 be appropriated for the purpose of control circuitry for the upgraded law enforcement communications system.

It is further recommended by the Committee that the Law Enforcement Teletype System be upgraded in accordance with the plan submitted to the Committee by the subcommittee alluded to earlier. This would provide for newer high-speed teletype equipment located in local sheriff's offices and police stations, and it would provide for message switching capability at State Radio headquarters. There will be installation costs for the upgrading of the system of \$10,535 and annual recurring costs of \$164,415.24 for the leasing of terminals, controllers, and arrangements, service terminals and drop charges, lines, data set, and system backup. It is therefore recommended that \$339,365.48 be appropriated for the funding of this upgrading for the next biennium.

The Committee is not unmindful of the fact that this will provide the hardware for a criminal justice information system (CJIS) for the State. It is not the intent of the Committee that a functioning CJIS be implemented as a result of this study. It is the intent of the Committee that the hardware be available so that a system may be developed as the need for such system currently exists. Any system which is

developed should take into consideration the "security and privacy" of information relating to private individuals which can be plugged into the system. It is also the intent of the Committee that appropriate agencies and people know of the existence of the hardware so the development of a CJI system can be expedited.

PESTICIDE STUDY

The Federal Environmental Pesticide Control Act of 1972 provides for the registration of pesticides and the classification of all registered pesticides as "general use", "restricted use", or both. If a person desires to sell or apply pesticides which have been classified as restricted use pesticides by the Environmental Protection Agency, that person must become certified to apply or sell restricted use pesticides. In order to be certified, an individual must be determined to be competent with respect to the use and handling of pesticides, or with respect to the use and handling of the pesticide or class of pesticides covered by such individual's certification. The Environmental Protection Agency has ruled that its function in relation to this law is to prescribe standards for the certification of applicators, but it does not have to establish a system or procedure of its own to determine the competency of individuals to handle restricted use pesticides. The Act provides a procedure for the individual states to establish their own certification procedures. If North Dakota fails to enact a system for the certification of pesticide applicators, any pesticide which is later determined by the Environmental Protection Agency to be a "restricted use" pesticide will not be available for use within North Dakota. (As of the writing of this report, the list of restricted use pesticides has not been determined by the Environmental Protection Agency.)

If a state desires to certify applicators of pesticides, the Governor of that state must submit a state plan for that purpose to the Administrator of the Environmental Protection Agency. The Administrator will approve a state plan if the plan designates a state agency responsible for administering the plan throughout the state contains assurances that the agency will have legal authority and qualified personnel to carry out the plan, contains assurances that the state will adequately fund the plan, contains a requirement for the state agency to report to the EPA in such form desired by the EPA, and contains assurances that the state standards for the certification of applicators conforms to the standards prescribed by the EPA.

In order for a state plan acceptable to the EPA to be developed, the Committee decided that legislation should be prepared which could give the "satisfactory assurances" required in the federal legislation. The EPA has subsequently ruled that a plan based on proposed legislation could give rise to

conditional approval of a state plan, provided that the proposed legislation was satisfactory. This conditional approval is meant to accommodate states, such as North Dakota, which have Legislative Assemblies that meet only every other year.

Development of a recommended bill and development of a plan which will be acceptable to the State of North Dakota and to the Environmental Protection Agency has required much cooperative effort on the part of the Committee and the state and federal agencies involved. The Governor's Office has designated the Department of Agriculture as the agency responsible for administering the plan throughout the State. The Committee prepared a bill which gives the Commissioner of Agriculture duties and responsibilities which would comply with the requirements of the Federal Environmental Pesticide Control Act of 1972.

The Chairman appointed a "Pesticide Subcommittee" to assist the Committee in preparing legislation which would meet the technical requirements of the federal legislation. The Committee then reviewed the work of the subcommittee and recommended some changes to the bill with the consent of the technical representatives who were on the subcommittee. A representative of the Environmental Protection Agency was present at virtually every meeting of the Pesticide Subcommittee, and virtually every meeting of the Committee where the proposed pesticide bill was discussed. The result of this is a bill draft which is being recommended by the Committee which, it is believed, will be satisfactory to give the Environmental Protection Agency "satisfactory assurances" required by the federal legislation.

The Agriculture Department is engaged in developing a plan pursuant to the Federal Environmental Pesticide Control Act of 1972 and pursuant to the bill prepared by the Committee which will be satisfactory to the EPA. Here again, a spirit of cooperation is existing between the EPA and the Agriculture Department. It is believed that the legislation as recommended and the plan will be sufficient for the State of North Dakota to obtain conditional approval of its certification plan and thereby be permitted to use and distribute restricted use pesticides within the State.

The Committee recommends passage of a bill to be known as the "North Dakota Pesticide Control Act of 1975". This Act would be administered and enforced by the Commissioner of Agriculture for the purpose of protecting the State's agricultural production and the State's citizens from forms of life which are determined to be pests. The bill provides for the definition of many technical terms used in the bill which have a special meaning. It gives the

Commissioner of Agriculture the duty of administering and enforcing the Act, and furthermore, gives him the authority to promulgate regulations which are necessary to carry out the duties imposed by the Act. Representatives of the Environmental Protection Agency indicate that the authority granted to promulgate regulations is necessary to conform to EPA standards.

The Act makes it possible for the Commissioner to issue experimental use permits if he determines that an individual needs it to accumulate information necessary to register a pesticide. Another section gives the Commissioner the authority to classify the licenses of commercial pesticide applicators. This is necessary so that an applicator who desires to apply pesticides commercially by a manual method will not have to pass the same examination as an aerial applicator.

The Act further requires any person who desires to engage in the business of applying restricted use pesticides to the lands of another to first obtain a commercial applicator's license. This license will be issued after the satisfactory completion of an appropriate examination as determined by the Commissioner. The license should be renewed by the last day of the calendar year. A nonresident may become licensed under the application procedure set out in the Act, and he shall be subject to the same testing requirements as other applicants unless he is licensed based on the reciprocal provision, wherein a person licensed under a similar law of another state may be licensed without an examination.

Another section of the Act makes it unlawful for a person to sell or distribute restricted use pesticides unless the person is licensed as a dealer. A license may only be obtained after an examination given by the Commissioner. The Act also allows the Commissioner to issue a limited license to governmental unit employees while acting within the scope of their employment.

The Act also requires private applicators to obtain certification before being permitted to purchase or apply restricted use pesticides to any land. This authorization would be granted without charge upon the satisfactory completion by the applicant of an examination which will show the applicant is competent to handle restricted use pesticides. The term private applicator is intended to include farmers and people who apply pesticides to their home gardens.

The Act sets out in specific detail conduct which is considered unlawful under the Act and gives the Commissioner the authority to suspend a license or certification either temporarily or on a more permanent basis if he finds the applicator has performed any of the unlawful acts. Under another

provision, the Commissioner may revoke a license or certification altogether if the applicator has violated any section of the Act or if the applicator has violated any of the rules and regulations promulgated under the Act. A criminal penalties section is also included within the Act. Within that section, it is provided that a private applicator who knowingly violates any section of the Act shall be guilty of a class B misdemeanor. This low-level penalty was chosen because the potential for harm from violations by private applicators is not considered as great as the potential for harm from violations by commercial applicators or distributors. Any commercial applicator, governmental unit applicator, or dealer who knowingly violates any provision of the Act shall be guilty of a class A misdemeanor.

The Commissioner must require all motor vehicles which are used for the application of restricted use pesticides to be identified with a special license plate or decal. The license plate or decal will be issued free of charge. An exception to this requirement is in the case of airplanes used for crop spraying. Airplanes are excepted because the Aeronautics Commission already has an identification procedure established for airplanes engaged in this business, and it is the intent of the Committee that the Aeronautics Commission continue to perform that function.

The Act prohibits the discarding and storing of restricted use pesticides and pesticide containers in a manner which would be harmful to the environment. It also gives the Commissioner the authority to promulgate regulations governing the discarding, storage, display, or disposal of any pesticide.

The Act further mandates that the Commissioner promulgate regulations for the reporting of significant pesticide accidents or incidents to his office. This is not intended to include accidents relating to the use of only restricted use pesticides, but to the use of any pesticide. Any person who files

a claim for a loss from a pesticide application must permit the Commissioner and the person who caused the damage to observe the damage. Failure to permit the observation will bar a claim against the person accused of causing the damage.

In a separate bill, the Committee recommends that Sections 28-01-40 and 28-01-41 of the North Dakota Century Code be amended. Those sections relate to the requirements for the reports of loss through spraying by aircraft to be submitted to the Aeronautics Commission and the form of those reports. The amendments require the reports to be submitted to the Agriculture Commissioner and would delete all references to aircraft. The intent of this is to prohibit a civil action resulting from the misapplication of an agricultural chemical, unless a report was on file and all of the parties had an opportunity to investigate the damage claim in a timely manner.

MISCELLANEOUS

The Chairman appointed a subcommittee of Committee members to investigate the leasing of office space outside of the State Capitol by state agencies. The subcommittee was to look at cost differentials and differentials in the quality of office space obtained. The subcommittee recommended no legislation, but it did make some conclusions which may warrant further study.

The first conclusion was that nothing illegal or unethical is being done in the leasing of office space, either by any agency head or by the Director of Institutions, who has responsibility in this area.

The second conclusion was that federally funded programs are occupying space in the State Capitol and are paying extremely low rental payments to the State, while state agencies must go outside of the State Capitol to find space and pay higher rentals. It may be possible to reserve the State Capitol exclusively for the benefit of state agencies.

TRANSPORTATION

The Committee concluded, after hearing the above-described testimony, that there was nothing specific that the Committee could recommend, as the Highway Department already had been doing planning to improve and repair roads in the area. The Committee, therefore, makes no recommendation to the Legislative Council.

There are three additional items which confronted the Transportation Committee during the courses of its studies relating generally to its assigned studies.

MISCELLANEOUS MATTERS

The first item is a recommended bill which would require that fees collected pursuant to North Dakota Century Code Chapter 39-06 would be paid into the highway fund, rather than the general fund. The feeling of the Committee was that funds derived from the sale of drivers licenses are highway user funds and should be dedicated to the benefit of the highway users.

The second additional item is a recommended bill which would permit the State Highway Commissioner to receive and expend funds made available by Congress for feeder roads and for rural transportation assistance programs and to assist in the development and improvement of surface transportation systems in rural and small urban areas. It was pointed out to the Committee that there are currently federal funds available for this type of program and that residents of North Dakota solicited the Highway Department to begin such a program. The recommended bill draft would permit the Highway Department to develop such a program, but would not permit the Highway Department to operate the program. As soon as the program is established, it would be assigned elsewhere for operation. The system would be basically a bus system and could be established in the area where there is an impact from coal development.

The third additional item relates to the problems of the Motor Vehicle Registrar in the administration of the registration laws of this State. The basic problem is that many vehicles are being radically modified by the owner, and then the owner attempts to register those vehicles as a type of vehicle which is different than it appears to be. This causes difficulty in the enforcement of the registration laws. The Motor Vehicle Registrar saw two possible solutions to the problem. The first of these was a complete revision of North Dakota Century Code Chapter 39-21 relating to the equipment of vehicles. The second is a bill draft giving the Motor Vehicle Registrar the administrative authority to suspend

or cancel the registration of vehicles under specific conditions. The Committee decided that it was too late to undertake a complete study of Chapter 39-21, so it directed its Counsel to work with the Motor Vehicle Registrar in preparing a study resolution for introduction into the next Session which would call for an interim committee of the Legislative Council to study and revise Chapter 39-21 during the next biennium. The Transportation Committee also directed its Committee Counsel to work with the Motor Vehicle Registrar to prepare a bill draft which would be sponsored by the Motor Vehicle Registrar and introduced into the Legislative Assembly which would give the Registrar the administrative authority to cancel or suspend the registration of vehicles in certain circumstances.

The full Legislative Council assigned the Committee on Transportation the responsibility of studying the areas of motor vehicle inspection, highway safety legislation, and the Uniform Vehicle Code at the beginning of the interim. Subsequently, the full Legislative Council expanded the study to include the impact of large-scale resource development on transportation facilities' needs and materials.

Members of the Committee on Transportation were: Representatives Ralph Winge, Chairman, Odell Berg, Harold Christensen, William Gackle, L.E. Garnas, Carl Meyer, Leonard Rice, Charles Scofield, and Andrew Headland; Senators Arthur Gronhovd, H. Kent Jones, Frank Shablow, and I.E. (Esky) Solberg. At the beginning of the interim, Representative I.O. Hensrud was a member of the Committee but he passed away during the interim and was replaced by Representative Headland.

The report of the Committee on Transportation was submitted to the Legislative Council at the biennial meeting of the Council held at Bismarck. The report and recommended legislation were adopted for submission to the Forty-fourth Legislative Assembly by the Legislative Council in November 1974.

MOTOR VEHICLE INSPECTION

The Committee was assigned the duty of studying North Dakota's current motor vehicle inspection program for the purpose of recommending and implementing an improved and upgraded motor vehicle inspection program for the State.

The Committee heard testimony relating to two basic reasons why an improved motor vehicle inspection program should be implemented. The first and primary reason is improved safety. Currently, unsafe vehicles contribute to approximately six per-

cent of the accidents in which there is personal injury, property damage, or death. The current random inspection program has a goal of inspecting 10 percent of the vehicles on the road; however, this program is limited to obvious safety defects. Approximately 22 percent of vehicles inspected under this program are found to be deficient.

The second basic reason for implementing an annual motor vehicle inspection program is to place North Dakota in compliance with Federal Highway Program Standard 4.4.1. This standard is promulgated by the United States Department of Transportation pursuant to the Highway Safety Act of 1966. It provides that any state which does not comply with the standard will lose 10 percent of the state's highway construction funds and all of the state's highway safety funds. The highway construction fund loss for North Dakota would amount to approximately \$6 million.

For these two reasons, the Transportation Committee voted to recommend to the Legislative Council a bill draft providing for annual motor vehicle inspection administered by the Superintendent of the Highway Patrol.

Section 1 of the recommended bill draft prohibits any person from driving or moving any registered motor vehicle in the State unless the vehicle is equipped pursuant to North Dakota laws and the equipment is in good working order and adjusted as required by law.

Section 2 mandates that the Superintendent of the Highway Patrol shall annually require every registered motor vehicle to be inspected and that an official certificate of inspection be obtained for each such vehicle. The inspection will include an inspection of the brakes, steering, tires, headlights, taillights, directional lights, suspension systems, and the registration of every motor vehicle. The section also provides that if a vehicle is found to be deficient, the owner of that vehicle may take it to a place other than the inspection station for repair or adjustment. It further provides for reciprocity of vehicle inspection with other states which have annual inspection and requires the Superintendent to extend the time within which a certificate of inspection must be obtained if the vehicle was not in the State at the time the inspection was required. Finally, Section 2 requires the Motor Vehicle Registrar, upon receipt of notice from the Superintendent of the Highway Patrol, to suspend the registration of any motor vehicle which the Superintendent determines to be unsafe or which is not equipped as required.

Section 3 provides the Superintendent of the Highway Patrol with administrative authority to designate and license inspection stations and to train and certify motor vehicle inspectors. It also

authorizes the inspection stations to charge fees for the required inspections. The maximum fee for the inspection of passenger vehicles, trucks, and buses under 26,000 pounds is \$5. The maximum fee for the inspection of trucks, trailers, and buses over 26,000 pounds is \$8, and the maximum inspection for motorcycles is \$2. It is the intent of the Committee that the Superintendent be allowed to charge an annual license fee for inspection stations.

Section 4 specifies that certain vehicles may be excepted from the annual vehicle inspection requirement. The vehicles to be excepted from this requirement are not listed, but may be determined by the Superintendent of the Highway Patrol through the issuance of an appropriate rule or regulation under the procedure set out in Section 6. This section should not be interpreted to allow for the exception of a vehicle which must be inspected to meet national standards, but would apply basically to the benefit of antique vehicles.

Section 5 provides for a motor vehicle inspection fund in the State Treasury in which inspection station operators' license fees and any other funds collected under the provision of this Act will be deposited. It provides further that any money not used in the administration of the Act shall be credited to the state highway fund. Funds to be collected under the Act are moneys from the licensing of stations, from the licensing of inspectors, and from the sale of inspection stickers for vehicles. The Superintendent of the Highway Patrol shall supply official inspection stickers to the inspection stations for a small fee to be determined by the Superintendent.

Section 6 requires the Superintendent of the Highway Patrol to promulgate rules and regulations setting forth the minimum equipment needed and procedures to be followed by inspection stations, regulations setting forth standards that vehicle inspectors shall meet, and procedures to be followed by persons who desire to become vehicle inspectors. This section further provides that any rules and regulations promulgated by the Superintendent of the Highway Patrol must first be approved by an appropriate interim committee of the Legislative Council in addition to any other steps established pursuant to Chapter 28-32. This section mandates that the rules and regulations shall give special consideration to farm trucks driven for limited use on a seasonal basis.

Section 7 provides for an administrative hearing upon request for any person who is aggrieved by a decision of the Superintendent or his agent under the provisions of this Act.

Section 8 makes it a Class B misdemeanor for a person to violate any of the provisions of the Act or any of the regulations promulgated under the Act.

Section 9 provides for the financing of the program by the appropriation of money collected pursuant to this Act.

HIGHWAY SAFETY

The second area of study assigned to the Transportation Committee was the area of highway safety. Within this area, the Transportation Committee considered motorcycle safety, alcohol safety, tire safety, and mandatory seat belt usage. From these four areas, the Committee is recommending to the Legislative Council for approval five bill drafts.

In the area of motorcycle safety, there are two recommended bills. The first provides for a new section to Title 39 of the Century Code, and requires that every motorcycle carrying a passenger other than in a sidecar or in an enclosed cab shall be equipped with footrests for each such passenger. It further provides that no person shall operate a motor vehicle with handlebars which extend more than 15 inches in height above that portion of the seat occupied by the driver. The second motorcycle safety provision does three things. First, it is a reenactment of the current legal requirement of wearing protective headgear. (The current section relating to protective headgear is being recommended for repeal in a section of the Rules of the Road in order that all of the motorcycle-related laws can be relocated at one location within the Code.) This bill adds to the protective headgear requirement, a requirement that a motorcycle rider use eye protective devices approved by the Motor Vehicle Registrar, unless the motorcycle is equipped with a windscreen. Thirdly, this bill authorizes the Motor Vehicle Registrar to approve or disapprove protective headgear and eye protective devices and to promulgate rules and regulations relating to protective headgear and eye protective devices.

In the area of alcohol safety, the Transportation Committee recommends two bills. The first would amend Subsection 1 of Section 39-08-01 of the 1973 Supplement to the Century Code. This section is amended to make it an offense for any person to drive or be in actual physical control of a vehicle if there is ten-hundredths of one percent or more by weight of alcohol in his blood and not merely evidence of an offense. This is commonly referred to as a "per se" law. It would further make it an offense for any person to drive or be in actual physical control of a vehicle if he is under the influence of any controlled substance to a degree which renders him incapable of safely driving or if he is under the combined influence of intoxicating liquor and any controlled substance. A new subsection to Section 39-08-01 is included in this bill. This new subsection provides that the entitlement to use alcohol or a controlled substance shall not be a defense against any charge of violating this section.

The second recommended bill in the area of alcohol safety is an amendment to Subsection 2 of Section 39-08-01 of the 1973 Supplement to the North Dakota Century Code. It relates to the penalty for driving while under the influence of alcohol or a controlled substance. It provides that the penalty for a first conviction is a Class B misdemeanor and provides for a minimum penalty of either three days in jail or a fine of \$100 or both. It further provides that a second conviction for a violation occurring within 18 months of a previous conviction is a Class A misdemeanor, and the minimum penalty for such violation shall be imprisonment for three days and a fine of \$150. These amendments are not intended to have any effect on other sections of the Code relating to sentencing to a treatment facility or to the power of a court to suspend or dismiss the charges.

In the area of tire safety, the Transportation Committee is recommending a new subsection to Section 39-21-40 of the North Dakota Century Code on tread depth legislation which would prohibit a person from operating a passenger vehicle or a pickup truck when one or more of the tires in use on that vehicle is in an unsafe operating condition or when one or more of the tires has a tread depth of less than two thirty-seconds of an inch.

In the area of mandatory seat belt usage, the Transportation Committee considered a bill which would make it mandatory for drivers and passengers and specified vehicle to have their seat belt fastened. The members of the Committee felt that this was getting into the area of protecting individuals from themselves and rejected the bill draft.

UNIFORM MOTOR VEHICLE CODE

The third major area of study of the Transportation Committee is the Uniform Vehicle Code. Each state's Rules of the Road are compared with the Uniform Vehicle Code's Rules of the Road by the U.S. Department of Transportation, and a point system comparison among the states is published. North Dakota was in the eighteenth position among the states at the beginning of the biennium and fell to the twenty-sixth position. The Transportation Committee determined that it would be desirable for the State to update its Rules of the Road to be in more substantial compliance with the Uniform Vehicle Code's Rules of the Road.

The Transportation Committee recommends three bills which would update the Rules of the Road. These bills were referred to in Committee as Rules of the Road I, Rules of the Road II, and Rules of the Road III. Rules of the Road I and Rules of the Road II both include provisions in which five points or more would be gained in the point system comparison with the Uniform Vehicle Code's Rules of

the Road. Rules of the Road III has amendments in which less than five points would be gained in the same point system comparison. The main thrust of all three bills is to revise language to make the language of the North Dakota statutes in compliance with the Uniform Vehicle Code. Also, some new sections are included where North Dakota had no comparable law. The sections changed, added, and repealed in all three bills are listed in Appendix "A" to this report.

The Transportation Committee felt that these changes were necessary for the State of North Dakota for a number of reasons. First, North Dakota has a tourist industry which seeks visitations from tourists from all over the United States. The safety of these visitors and the State's own residents would be enhanced by laws which are uniform among the states. Secondly, if this State fell from its relatively high position in the point rating evaluation of the states to a very low rating, there is a danger that the U.S. Department of Transportation would invoke financial sanctions under the Highway Safety Act of 1966 and withhold highway construction funds.

IMPACT OF RESOURCE DEVELOPMENT

In the additional study recommended by the Resources Development Committee and approved by the Legislative Council in regard to the impact of a gasification plant on transportation in the plant area, the Transportation Committee heard testimony on the current usage of the airports, railroads, and highways within the impact area of the first gasification plant. (The location of the first gasification plant was subsequently identified as being six miles north northwest of Beulah, and the impact area is defined as a radius of 40 miles around that point.) The Committee also asked the company proposing the gasification project what it projected the impact on transportation would be. The developer hired Woodward-Envicon, an environmental consulting firm, to prepare an environmental impact statement to be presented to

the Federal Power Commission and state authorities.

The Committee was informed that the two key aspects of transportation impact investigated by Woodward-Envicon were:

1. How the required construction supplies could be shipped to the Mercer County area; and
2. How public transportation could affect work force travel through the Mercer County area.

The Committee heard uncontested testimony to the effect that:

1. The freight capacity of the railroads has been far heavier in the past than it is now and can absorb significant additional shipping with no major problems. A railroad spur to the mainline of the railroad will be built by Michigan Wisconsin.
2. The product of the plant will be gas, and it is anticipated that the product will be shipped by means of a pipeline to be built in the future to the area of use. Significant shipment by trucks on local roads should not occur during the operational life of the plant. However, during construction, additional trucking will occur.
3. Public transportation facilities in the area are limited and the automobile will be the major source of transportation for workers to reach the site.
4. The Mercer County traffic flow ranges from 200 to 800 cars per 24-hour period. This low-level traffic flow range provides significant room for gradual adjustment for additional workers. The construction period, as planned, coincides with the North Dakota Highway Department's plans for improvement and repairing of some of the major highway routes in the area, although heavy utilization of the routes may affect them.

APPENDIX "A"

Section	RULES OF THE ROAD I
39-10-15	(amendment)
39-10-07.1	(new)
39-10-07.2	(new)
39-10-08	(amendment)
39-10-14	(amendment)
39-10-15	(amendment)
39-10-16	(amendment)
39-10-17	(amendment)
39-10-26	(amendment)
39-10-26.1	(new)
39-10-27	(amendment)
39-10-29	(amendment)
39-10-33	(amendment)
39-10-33.1	(new)
39-10-33.2	(new)
39-10-33.3	(new)
39-10-33.4	(new)
39-10-33.5	(new)
39-10-34	(amendment)
39-10-35	(amendment)
39-10-36	(amendment)
39-10-38	(amendment)
39-10-43	(amendment)
39-10-64	(amendment)

Repeals

- 24-09-06
- 39-10-31
- 39-13-04

Section	RULES OF THE ROAD II
39-09-04.1	(new)
39-10-02.1	(amendment)
39-10-21	(amendment)
39-10-47	(amendment)
39-10-48	(amendment)
39-10-50	(amendment)
39-10-52.1	(new)
39-10-52.2	(new)
39-10-68	(new)
39-10-69	(new)
39-10-70	(new)
39-10-71	(new)

Chapter 39-10.1 (New Chapter)

- 39-10.1-01
- 39-10.1-02
- 39-10.1-03
- 39-10.1-04
- 39-10.1-05
- 39-10.1-06
- 39-10.1-07
- 39-10.1-08

Chapter 39-10.2 (New Chapter)

- 39-10.2-01
- 39-10.2-02
- 39-10.2-03
- 39-10.2-04
- 39-10.2-05
- 39-10.2-06
- 39-10.2-07

Section	
39-18-04	(amendment)
39-18-05	(amendment)

Repeals

- 39-09-05
- 39-10-53
- 39-10-60
- 39-10-61
- 39-10-62
- 39-10-63
- 39-10-63.1
- 39-21-48
- 39-21-49

RULES OF THE ROAD III

24-01-14	(amendment)
39-01-01	(amendment)
39-01-08	(amendment)
39-07-05	(amendment)
39-08-03	(amendment)
39-08-08	(amendment)
39-08-17	(amendment)
39-08-18	(amendment)
39-09-01	(amendment)
39-09-02	(amendment)
39-09-03	(amendment)
39-09-04	(amendment)
39-09-09	(amendment)
39-10-01	(amendment)
39-10-01.1	(new)
39-10-02	(amendment)
39-10-04	(amendment)
39-10-06	(amendment)
39-10-07	(amendment)
39-10-07.3	(amendment)
39-10-11	(amendment)
39-10-12	(amendment)
39-10-13	(amendment)
39-10-18	(amendment)
39-10-19	(amendment)
39-10-22	(amendment)
39-10-23	(amendment)
39-10-24	(amendment)
39-10-25	(amendment)
39-10-28	(amendment)
39-10-30	(amendment)
39-10-39	(amendment)
39-10-41	(amendment)
39-10-42	(amendment)
39-10-43.1	(new)
39-10-45	(amendment)
39-10-46	(amendment)
39-10-51	(amendment)
39-10-52	(amendment)
39-10-54.1	(amendment)
39-10-55	(amendment)
39-10-56	(amendment)
39-10-57	(amendment)
39-10-58	(amendment)
39-13-03	(amendment)

Repeals

- 39-07-04
- 39-09-08

EXPLANATION OF LEGISLATIVE COUNCIL BILLS AND RESOLUTIONS

SENATE

Senate Bill No. 2016 — Bonding Coverage for Public Employees. This bill requires periodic review of employee bonding coverage, clarifies certain bonding fund statutory definitions and blanket bond coverage for public officials, and disallows coverage for employees of the occupational and professional boards and commissions. (Committee on Budget "A")

Senate Bill No. 2017 — Examination of Certain Accounts with Financial Institutions. This bill permits inspection, audit, or examination of certain accounts with financial institutions by the State Auditor, the Commissioner of Banking, or the Attorney General in cases where private and public funds are commingled. Before such examination could be made, an order from a district court would have to be obtained. (Committee on Budget "A")

Senate Bill No. 2018 — Audits of Occupational and Professional Boards and Commissions. This bill provides that the occupational and professional boards and commissions shall have audits of their operations conducted by a certified public accountant at least once every two years. (Committee on Budget "A")

Senate Bill No. 2019 — Preplanning Revolving Fund. This bill provides for the establishment of a revolving fund for the prepayment of consulting and planning fees for capital improvements and provides for a \$200,000 appropriation for the initial working capital of the fund. (Committee on Budget "B")

Senate Bill No. 2020 — Revenue Bond Proceeds. This bill provides that revenue bonds cannot be issued in amounts greater than the cost of facilities to be constructed from the bond proceeds. (Committee on Budget "B")

Senate Bill No. 2021 — Placement of Deaf-Blind Children. This bill provides flexibility for the Director of Institutions in the placement of deaf-blind children. (Committee on Education "A")

Senate Bill No. 2022 — Formula for Junior College Aid. This bill would change the formula for state aid for junior colleges from the present annual basis to a weekly calculation. Instead of providing aid only for full-time students, the new formula also would reimburse the junior colleges for part-time

summer session students on a full-time equivalency basis. (Committee on Education "A")

Senate Bill No. 2023 — Review of Junior College Budgets. This bill would provide for an annual review of junior college budgets by the State Board of Public School Education. (Committee on Education "A")

Senate Bill No. 2024 — Verification of Junior College Students. This bill would change the responsibility for verifying junior college students from the Boards of Higher Education and Vocational Education to the State Board of Public School Education. (Committee on Education "A")

Senate Bill No. 2025 — Kindergarten Programs. This bill would permit school boards to establish kindergarten programs and to submit the question of providing a mill levy for such programs to the electors. (Committee on Education "B")

Senate Bill No. 2026 — Educational Finance. This bill continues the basic concept of Senate Bill No. 2026 (1973). Per-pupil payments would be increased to \$620 the first year and \$680 the second year of the next biennium. The bill includes state aid for kindergarten and summer school programs and a new formula for transportation aid. The 24-mill maximum levy established in 1973 would be continued, and the bill would remove the population limitation for approval of unlimited mill levies and mill levies of a specific number of mills. (Committee on Education "B")

Senate Bill No. 2027 — Oil and Gas Production Tax Allocations. This bill would place school district portions of oil and gas gross production tax allocations in the county equalization funds in the producing counties. (Committee on Education "B")

Senate Bill No. 2028 — School District Bond Issue Voting. This bill changes the vote required in school district bond issue elections from 60 per cent to 55 per cent. (Committee on Education "B")

Senate Bill No. 2029 — Votes Required for School Building Fund Levies. This bill changes the vote required to approve a school building fund levy from 60 per cent to a majority of the voters. (Committee on Education "B")

Senate Bill No. 2030 — Statements of Consideration. This bill requires that a statement of consideration be filed with the registrar of deeds or with the State Tax Commissioner. (Committee on Education "B")

Senate Bill No. 2031 — Severance Tax on Coal. This bill would provide for a severance tax of 10 per cent of gross value or a minimum of 25 cents per ton on all coal mined in the State. The revenues would be allocated as follows: 10 per cent to the counties and political subdivisions, 50 per cent to a special trust fund, and 40 per cent to the General Fund. (Committee on Finance and Taxation)

Senate Bill No. 2032 — Taxation of Coal Development Plants. This bill provides for a privilege tax for coal development plants using over two million tons of coal annually. The rate of the tax would be 10 cents per thousand cubic feet on synthetic natural gas and three-tenths of a mill on each kilowatt hour of electricity produced for sale. (Committee on Finance and Taxation)

Senate Bill No. 2033 — State Impact Aid Program. This bill provides for a state impact aid program to reimburse political subdivisions for impact expenditures resulting from coal development. Existing executive branch agencies would make recommendations on impact applications received from political subdivisions, and final decisions would be made by a special Legislative Council Coal Development Impact Committee. (Committee on Finance and Taxation)

Senate Bill No. 2034 — Workmen's Compensation Coverage for Agriculture. This bill removes the present exception of agricultural employment from mandatory workmen's compensation coverage. Special provisions are made to exclude from mandatory coverage persons who work on an exchange basis for another farmer, relatives of the farmer, and wards or dependents living with the farmer unless the farmer notifies the Bureau and pays a premium for such coverage. (Committee on Industry and Business "A")

Senate Bill No. 2035 — Workmen's Compensation Coverage for Employees of Religious Organizations. This bill removes the present exception of clergy and employees of religious organizations engaged in the operation, maintenance, and conduct of a place of worship from mandatory workmen's compensation coverage. (Committee on Industry and Business "A")

Senate Bill No. 2036 — Workmen's Compensation Benefits. This bill improves the existing workmen's compensation benefit formula for temporary or permanent total disability to provide compensation equal to $66 \frac{2}{3}$ per cent of the weekly wage of the claimant, subject to a minimum

payment of 60 per cent and a maximum payment of 100 per cent of the average weekly wage in the State. (Committee on Industry and Business "A")

Senate Bill No. 2037 — Workmen's Compensation Bureau Advisory Council. This bill creates a seven-member advisory council appointed by the Workmen's Compensation Bureau to aid the Bureau in formulating policies related to the administration of the Bureau. (Committee on Industry and Business "A")

Senate Bill No. 2038 — Interest Rate Maximums. This bill authorizes state banking associations to pay interest rates on deposits as authorized by the State Banking Board, subject to maximum rates per annum established by the Federal Reserve System. The maximum interest rate chargeable on loans is maintained at three per cent higher than the maximum rate payable on certain deposits. (Committee on Industry and Business "A")

Senate Bill No. 2039 — Criminal Statute Revision. This bill amends or repeals all sections of the Century Code which presently define crimes or provide criminal penalties for offenses defined in other sections. The principal reasons for the revisions are to make all criminal penalties conform to the offense classification format contained in the new Criminal Code (effective July 1, 1975) and to delete outmoded or unnecessary sections. (Committee on Judiciary "A")

Senate Bill No. 2040 — Revision of S.B. No. 2045. This bill amends the basic Criminal Code, enacted in 1973, to create an offense classification known as infraction; to clarify certain offense definitions; to expand the instances wherein the use of force by peace officers is justified; and to create a separate fine schedule for business "organizations". The bill also makes several changes in the sentencing code, including deletion of the legislative philosophy favoring concurrent sentencing. (Committee on Judiciary "A")

Senate Bill No. 2041 — Traffic Offense Point System Revision. This bill would revise the "point system" to include some violations which were inadvertently excluded last Session, to change the points assigned to certain violations, and to create the offenses of "drag racing" and "exhibition driving". Persons appealing from an administrative disposition hearing would no longer have a jury trial, but would be tried by a district judge. Speeding offenses would be broken into three classes based on the miles per hour over the speed limit, and points would be assigned accordingly. (Committee on Judiciary "B")

Senate Bill No. 2042 — Prison Industries Fund. This bill would create a Prison Industries Fund. All moneys received from sale of prison-made goods

would be deposited in the fund, and, subject to legislative appropriation, the expenses of operating the prison industries, including compensation for inmate labor, would be paid from the fund. The Director of Institutions will set inmates' compensation, but compensation of inmates not working in a prison industry cannot exceed \$1.20 per day. The bill would repeal sections specifically referring to existing prison industries. (Committee on Judiciary "B")

Senate Bill No. 2043 — Inmate Eligibility for Work and Education Release Programs. This bill provides that the warden may make the determination that an inmate is eligible to participate in work or education release programs. The inmate's eligibility will not be affected because he is still serving a minimum sentence. The warden is to approve or disapprove inmate applications for participation and is to forward all applications to the Parole Board. The board, however, may only act on approved applications. The bill also gives the board, with the warden's approval, authority to grant short leaves of not more than three days to inmates who have been on work or education release programs for 30 days or more. (Committee on Judiciary "B")

Senate Bill No. 2044 — Industrial School Disciplinary Committee. This bill deletes the present disciplinary committee provisions and provides that the superintendent appoint a disciplinary committee with membership to include cottage supervisors, professional staff, students, and members of the general public. The committee is to hear all charges of serious breach of discipline and to recommend disciplinary action. If a student is placed under close supervision because of a breach of discipline, the committee is to hear his case within 48 hours. The bill also authorizes the superintendent to pay a stipend to students. The amount of the stipend would be set by the superintendent with the approval of the Director of Institutions, within legislative appropriations. (Committee on Judiciary "B")

Senate Bill No. 2045 — Age Limit on Industrial School Detention. This bill authorizes judges of district courts and county courts with increased jurisdiction to sentence minors convicted of crimes to the Industrial School for up to two years, even though the commitment would run beyond the minor's 18th birthday. The bill also deals with paroles ("aftercare programs") from the Industrial School, and authorizes the Director of Institutions to establish programs and facilities for aftercare. The bill provides procedures for recommitment for a student who violates aftercare regulations. (Committee on Judiciary "B")

Senate Bill No. 2046 — Penal Inmates and Controlled Substances. This bill increases the penalty classification (Class B felony) for delivering con-

trolled substances to inmates (or students) in any penal institution, including county jails and that portion of the State Hospital housing convicts. Penalties are also set for delivering alcoholic beverages to inmates. Similar penalties are established for inmates (or students) possessing controlled substances or alcoholic beverages. The general provision forbidding illegal delivery or possession of controlled substances would not apply to inmates (or students) or to those who deliver to them. A student over 15 years old caught in possession of controlled substances would be tried as an adult. Any Penitentiary inmate convicted of possession of controlled substances would have his new sentence run consecutively to his current sentence. (Committee on Judiciary "B")

Senate Bill No. 2047 — Juvenile Court Jurisdiction. This bill redefines the word "child" to include persons under age 20, if they are before the juvenile court because of a delinquent act committed while they were under age 18. All orders of a juvenile court, except an order terminating parental rights, will terminate upon the particular juvenile's 20th birthday. When the court reviews an order affecting a child under age 10 who has been removed from parental custody, it must consider the desirability of terminating parental rights. When a youth is charged with a delinquent act, he may be transferred to "adult" court at his request if he is over 17 years old. (Committee on Judiciary "B")

Senate Bill No. 2048 — Compensation for Returning Person Under Extradition Warrants. This bill raises the per diem paid to persons who return fugitives from justice from \$3 to \$20. (Committee on Judiciary "B")

Senate Bill No. 2049 — Medical Center Advisory Council. This bill provides for increasing the number of Medical Center Advisory Council members from 7 to 11 members. The additional four members shall be the persons serving as directors of the area health education centers in Grand Forks, Fargo, Bismarck, and Minot. (Committee on Medical Education and Government Administration)

Senate Bill No. 2050 — Energy Conversion and Transmission Facility Siting. This bill requires utilities to obtain certificates of site compatibility prior to constructing a plant or a transmission line. Certificates would be issued by the Public Service Commission as the result of criteria developed from long-range forecasts, public hearings, and environmental evaluation. Siting fees are required, and the bill contains a General Fund appropriation of \$190,000 for the biennium. (Committee on Natural Resources "A")

Senate Bill No. 2051 — City Planning and Development. This bill replaces existing city planning and zoning authority with a comprehensive

Act providing for city planning, zoning, official maps, and subdivision regulations. The authorization of cities to zone and control the subdivision of land outside their corporate limits depending upon their population is a change from existing law. (Committee on Natural Resources "A")

Senate Bill No. 2052 — County Planning and Development. This bill replaces existing county planning and zoning authority with a comprehensive Act providing for county planning, zoning, and subdivision regulations. The membership of the county planning commission would be changed to ensure rural representation because the bill repeals township zoning authority. (Committee on Natural Resources "A")

Senate Bill No. 2053 — Joint Planning Commissions. This bill consolidates the provisions of Chapter 11-35 and Sections 54-34.1-10 through 54-34.1-14 and authorizes cities and counties to engage in joint planning activities. (Committee on Natural Resources "A")

Senate Bill No. 2054 — State Planning Division Review and Comment Authority. This bill authorizes the State Planning Division to review and comment upon local land use plans and upon applications for permits for activities having more than local significance or state concern which are submitted to state agencies. (Committee on Natural Resources "A")

Senate Bill No. 2055 — Municipal Incorporation. This bill revises obsolete language and establishes new requirements for incorporation of unorganized territory as a city. The board of county commissioners is also authorized to issue an order of incorporation of a new city where the petition for incorporation is signed by at least two-thirds of the residents. (Committee on Natural Resources "A")

Senate Bill No. 2056 — Rendering Plants. This bill repeals certain Health Department authority to regulate rendering plants which has been outdated by other law. (Committee on Natural Resources "B")

Senate Bill No. 2057 — Disinfection of Second-Hand Goods. This bill repeals the requirement that second-hand goods be disinfected prior to sale. (Committee on Natural Resources "B")

Senate Bill No. 2058 — Meaning of Minerals. This bill provides for a statutory rule of construction for the term "minerals" and the phrase "all other minerals" in a deed or grant of the surface of real property. (Committee on Resources Development)

Senate Bill No. 2059 — Coal Leasing Practices Act. This bill provides statutory recognition for the

use of sight drafts in the coal leasing situation and allows either party to a coal lease to cancel a coal lease for the first 15 days after it was executed. It also provides for a primary term of 20 years for a coal lease, provides for the authority to use an option to renew a lease, and provides for new bonus and royalty terms upon exercise of the option to renew. The new terms are to be based on changes in the consumer price index since the lease was executed and advance royalty treatment of payments must be specially pointed out to the lessor and acknowledged. Further, the bill provides for 15 percent royalty payments or 25 cents per ton, whichever is greater, and gives the Tax Commissioner authority to determine the statewide average per ton price of coal. (Committee on Resources Development)

Senate Bill No. 2060 — Pesticide Legislation. This bill provides for a means for the certification of pesticide applicators, so that pesticides which become "restricted use" pesticides under the terms of the Federal Environmental Pesticide Control Act of 1972 will be available for use within the State of North Dakota. (Committee on State and Federal Government)

Senate Bill No. 2061 — Reports of Pesticide Loss. This bill amends the law which requires the reporting of pesticide accidents caused by aircraft to the Aeronautics Commissioner, to require the reporting of any pesticide accident to the Agriculture Commissioner, before civil liability for the damage may attach. (Committee on State and Federal Government)

Senate Bill No. 2062 — Footrests and Handlebars on Motorcycles. This bill requires all motorcycles carrying a passenger to be equipped with footrests and prohibits any motorcycle to have handlebars over 15 inches in height above the operator's seat. (Committee on Transportation)

Senate Bill No. 2063 — Protective Headgear and Eye-Protective Devices. This bill provides that all motorcycle operators must use both helmets and eye-protective devices. There is an exception in eye-protective devices if the vehicle is equipped with a windscreen. (Committee on Transportation)

Senate Bill No. 2064 — Per Se Legislation. This bill amends current law relating to the operation of motor vehicles while under the influence of alcohol to make it an offense "per se" to have hundredths of one percent of alcohol in the blood when driving a motor vehicle. (Committee on Transportation)

Senate Bill No. 2065 — Penalties for Driving Under Influence. This bill provides for a minimum penalty for a conviction for driving under the influence of alcohol for both a first conviction and a

subsequent conviction. The second conviction would include a mandatory three-day jail sentence. (Committee on Transportation)

Senate Bill No. 2066 — Tire Safety Legislation. This bill makes illegal to operate a motor vehicle which has unsafe tires or which has tires with less than two thirty-seconds of an inch of tread. (Committee on Transportation)

Senate Bill No. 2067 — Rules of the Road I. This bill adds new sections, amends sections, and repeals some sections of the Century Code relating to the Rules of the Road. It is the first of three bills based on the Uniform Vehicle Code, and it is intended to put North Dakota Rules of the Road into substantial compliance with the Uniform Vehicle Code Rules of the Road. (Committee on Transportation)

Senate Bill No. 2068 — Rules of the Road II. This bill adds new sections, amends sections, and repeals some sections of the Century Code relating to the Rules of the Road. It is the second of three bills based on the Uniform Vehicle Code, and it is intended to put North Dakota Rules of the Road into substantial compliance with the Uniform Vehicle Code Rules of the Road. (Committee on Transportation)

Senate Bill No. 2069 — Rules of the Road III. This bill adds new sections, amends sections, and repeals some sections of the Century Code relating to the Rules of the Road. It is the third of three bills based on the Uniform Vehicle Code, and it is intended to put North Dakota Rules of the Road into substantial compliance with the Uniform Vehicle Code Rules of the Road. (Committee on Transportation)

Senate Bill No. 2070 — Motor Vehicle Inspection. This bill provides for the establishment of an annual motor vehicle inspection program under

the administration of the Superintendent of the Highway Patrol. It provides for the parts of vehicles to be inspected and for the promulgation of rules and regulations by the Superintendent with the assistance of an appropriate legislative interim committee giving advice. (Committee on Transportation)

Senate Concurrent Resolution No. 4001 — Urges Congress to Amend Fair Labor Standards Act. Members of the North Dakota Congressional Delegation are urged and requested to pass legislation which would exempt or partially exempt patient-workers at state institutions from the minimum wage provisions of the Fair Labor Standards Act. (Budget Section)

Senate Concurrent Resolution No. 4002 — Constitutional Revision Concerning Education. This is one of two alternatives concerning constitutional revision of education. Under this alternative, there would be two constitutional boards, a Board of Higher Education and a Board of Public Education. (Committee on Education "A")

Senate Concurrent Resolution No. 4003 — Constitutional Revision Concerning Education. This alternative provides for one constitutional board, to be called the State Commission of Education and to consist of 15 members appointed by the Governor and confirmed by the Senate. (Committee on Education "A")

Senate Concurrent Resolution No. 4004 — Administrative Criminal Liability. This resolution directs the Legislative Council to study and revise administrative regulations when violation of those regulations can result in criminal punishment. Also requires study of civil and criminal contempt, appellate review of sentences, and loss of civil rights following a criminal conviction. (Committee on Judiciary "A")

HOUSE

House Bill No. 1016 — Emergency Salary Increases. This bill contains an emergency clause and provides an appropriation to fund salary increases for state employees for the period January 1, 1975, through June 30, 1975. The salary increases are based on pay plans developed by the Central Personnel Division and the Board of Higher Education. The bill appropriates a total of approximately \$6.3 million with \$3.3 million going to institutions and agencies of higher education and \$3.0 million going to state agencies and other institutions. (Legislative Council)

House Bill No. 1017 — Crediting of Interest. This bill provides that agencies operating entirely from special funds and maintaining an average special fund balance in excess of \$300,000 will receive from the State Treasurer 90 percent of the interest earned on amounts in excess of the \$300,000 minimum balance. (Committee on Budget "A")

House Bill No. 1018 — Billings to Responsible Relatives. This bill provides that on July 1, 1975, the supervisory departments of the Grafton State School, the San Haven State Hospital, and the State Hospital shall write off from their records and shall discontinue efforts to collect from parents of patients uncollected amounts previously determined to be due for care and treatment provided for their children after their children had reached the age of 18 years. (Committee on Budget "A")

House Bill No. 1019 — Postage Meter Usage. This bill requires all agencies desiring to use a postage meter, or to continue the use of a meter presently in use, to receive approval from the Director of Institutions. (Committee on Budget "A")

House Bill No. 1020 — Multidistrict Vocational Education Centers. This bill authorizes the creation of multidistrict vocational education boards by three or more school districts. The multidistrict board members would be appointed by participating school boards from among their members and would have authority to manage cooperative vocational education centers. (Committee on Education "A")

House Bill No. 1021 — Counting Cooperative Vocational Courses for Accreditation. This bill permits school districts to count for accreditation purposes vocational education courses taken in approved cooperative programs. (Committee on Education "A")

House Bill No. 1022 — Transportation Aid for Cooperative Vocational Programs. This bill provides state transportation aid for transporting pupils to and from approved cooperative vocational education programs. (Committee on Education "A")

House Bill No. 1023 — Mill Levy for Cooperative Vocational Education Programs. This bill permits a mill levy for participating in approved cooperative vocational education programs. (Committee on Education "A")

House Bill No. 1024 — Mill Levy for Transportation. This bill would permit a mill levy for transportation purposes. (Committee on Education "B")

House Bill No. 1025 — Delinquent Tuition Payments. This bill provides for the charging of simple interest on delinquent tuition payments from sending school districts. (Committee on Education "B")

House Bill No. 1026 — Failure to Charge Tuition. This bill provides for the forfeiture of certain Foundation Program payments for those districts that fail to charge and collect tuition for nonresident students. (Committee on Education "B")

House Bill No. 1027 — School Activities Funds. This bill requires that each school district establish an activities fund and provides for the removal of the dollar limitation on incidental revolving funds. (Committee on Education "B")

House Bill No. 1028 — Proportionate Payments for Special Education Students. This bill provides that students enrolled in nonpublic schools and taking special education in public schools shall entitle the public school districts to proportionate Foundation Program payments. (Committee on Education "B")

House Bill No. 1029 — State School Construction Fund Loans. This bill increases the amount and lengthens the terms on State School Construction Fund loans. (Committee on Education "B")

House Bill No. 1030 — Transfer of Funds to the State School Construction Fund. This bill would transfer \$2 million from the General Fund to the State School Construction Fund and provides a statement of legislative intent that the balance be increased to a total of \$15 million. (Committee on Education "B")

House Bill No. 1031 — Taxation on Indian Reservations. This bill would authorize agreements between the State Tax Commissioner, the State Treasurer, and the recognized Indian tribes in the State for the collection of certain tribal taxes from persons over whom the State lacks jurisdiction to tax. The tribal taxes would have to be similar to

state taxes, and the revenue would be apportioned between the State and the tribes. (Committee on Finance and Taxation)

House Bill No. 1032 — Estate Tax Repeal. This bill repeals the estate tax. (Committee on Finance and Taxation)

House Bill No. 1033 — Recovery of Unpaid Wages. This bill repeals the section authorizing an employee to bring a civil action to recover the difference between the minimum wage and the wage actually paid by the employer and allows recovery under the existing wage collection Act. (Committee on Industry and Business "B")

House Bill No. 1034 — Child Labor Provisions. This bill allows the Labor Commissioner to proceed through the Attorney General's office for violations of child labor provisions. It also repeals school attendance requirements for issuing an employment certificate and the prohibition of employment of a minor as a pin boy in a bowling establishment. (Committee on Industry and Business "B")

House Bill No. 1035 — Employer Benefits. This bill repeals a section prohibiting an employee from fraudulently securing benefits from an employer. (Committee on Industry and Business "B")

House Bill No. 1036 — Unfair Labor Practice Authority. This bill authorizes the Labor Commissioner to order the reinstatement of employees with or without backpay in order to provide relief to employees against whom an unfair labor practice has been directed. (Committee on Industry and Business "B")

House Bill No. 1037 — Amount of Recovery on Unpaid Wages. This bill authorizes an employee to recover an amount equal to double the unpaid wages if the employer has been found liable for two previous wage claims and treble the unpaid wages if the employer has been found liable for three previous wage claims. (Committee on Industry and Business "B")

House Bill No. 1038 — Lists of Employers' Names. This bill authorizes the Workmen's Compensation Bureau to provide lists of employers' names and addresses to the Labor Commissioner. (Committee on Industry and Business "B")

House Bill No. 1039 — North Dakota Equal Employment Opportunity Act. This bill prohibits an employer, employment agency, labor organization, or licensing agency from discriminating in employment practices because of race, color, religion, national origin, sex, age (between 40 and 65), or marital status. However, discriminatory employment practices would not be prohibited with regard to religion, national origin, or sex in in-

stances where religion, national origin, or sex are bona fide occupational qualifications necessary for the operation of the enterprise. (Committee on Industry and Business "B")

House Bill No. 1040 — Municipal Firefighters Employment Relations. This bill authorizes municipal firefighters to join employee organizations for the purpose of collective bargaining. The Act is administered by the Labor Commissioner. Unfair practices are listed and the parties have the duty to bargain collectively in good faith. If an impasse in negotiation occurs, binding arbitration could be requested by either party. Employee strikes are expressly prohibited. (Committee on Industry and Business "B")

House Bill No. 1041 — State Employee Employment Relations. This bill authorizes state employees to join employee organizations for the purpose of collective bargaining. The Act is administered by a five-member Public Employment Relations Board with four members appointed by the Governor and with the Labor Commissioner as chairman. Unfair practices are listed and the parties have the duty to bargain collectively in good faith. Bargaining over noneconomic items is with the agency head while bargaining over economic items is with the Governor or his designated representatives and requires legislative approval. An impasse in negotiation would be resolved through mediation and factfinding. Employee strikes are expressly prohibited. (Committee on Industry and Business "B")

House Bill No. 1042 — Transfer of Grafton State School and San Haven State Hospital to State Health Department. This bill provides for the transfer of the Grafton State School and the San Haven State Hospital from under the supervision of the Director of Institutions' office to the Mental Health and Retardation Division of the State Department of Health. (Committee on Institutional Organization)

House Bill No. 1043 — Obscenity Control. This bill provides criminal penalties for promoting obscene performances to adults and minors or for allowing such performances in liquor establishments. Penalties are also provided for participating in such performances. Provision is made for a civil proceeding to determine if materials (books, movies, pictures, sound recordings, etc.) are obscene. Material would have to be declared obscene in the civil trial before criminal charges could be brought against persons who continue to disseminate those particular materials. Disseminating materials to minors is classified as a Class C felony. All other offenses in the bill are Class A misdemeanors. (Committee on Judiciary "A")

House Bill No. 1044 — Flags. This bill repeals sections of state law prohibiting the display of certain flags, including red or black flags. The bill is an alternative to House Bill No. 1045. The bill requires a two-thirds majority for successful passage in each House as it repeals sections enacted by the initiative process. (Committee on Judiciary "A")

House Bill No. 1045 — Flags. This bill makes it a Class A misdemeanor to carry or exhibit any flags but those of the United States, any state, or of a friendly foreign nation. These provisions would replace existing statutes which would be repealed. This bill is an alternative to House Bill No. 1044, and would require a two-thirds vote in each House to pass. (Committee on Judiciary "A")

House Bill No. 1046 — Probate Code Amendments. This bill would amend several sections in the new Probate Code. The amendments are for clarity in most instances; however, the State Tax Department is given responsibility for collecting the estate tax, instead of the county treasurer. (Committee on Judiciary "B")

House Bill No. 1047 — State Financial Assistance for Local Law Enforcement. This bill would provide an appropriation of \$1.8 million for assistance to cities for law enforcement purposes. Assistance would take one of two forms: outright two-year grants to cities over 2,000 population based on a population formula, or two-year grants to cities of any size to pay 25 percent of the cost of contract policing agreements. The program would be administered by the Law Enforcement Council, and cities receiving grants would have to meet certain standards established by the Council. (Committee on Judiciary "B")

House Bill No. 1048 — Creating Division of Motor Vehicles. This bill would create a Division of Motor Vehicles in the Highway Department. It would consist of the present functions of the Motor Vehicle Registrar, the Truck Regulatory Division, and the Drivers' Licensing Division. The Highway Commissioner would appoint the director of the division and set his salary within legislative appropriations. (Committee on Judiciary "B")

House Bill No. 1049 — Handling of Inmate Funds. This bill provides that each inmate is to have an account kept by the warden. Fifty percent of each inmate's earnings will be deposited in that account until \$100 has been accumulated, which shall be held until the inmate is released. All other moneys earned or received by the inmate are available to him under the supervision of the warden. Money left unclaimed by a former inmate for a one-year period is to be transferred to the General Fund. A released inmate is to get appropriate clothing and transportation to a point within the State, based on the warden's decision and the inmate's need. If the war-

den and his deputy wardens will all be absent at the same time, the warden is to designate an acting warden, in writing, and to notify the Director of Institutions, in writing, of his choice. (Committee on Judiciary "B")

House Bill No. 1050 — Tobacco Sales to Minors. This bill repeals the section in the new Criminal Code which makes it a Class B misdemeanor to furnish tobacco to minors or for a minor to use tobacco in any place, public or private. (Committee on Judiciary "B")

House Bill No. 1051 — Constitutional Amendment Conflicts. This bill authorizes the Secretary of State, with the aid of the Attorney General, to determine if proposed constitutional amendment resolutions conflict and provides a procedure for resolving conflicts and handling irreconcilable conflicts. (Committee on Legislative Procedure and Arrangements.)

House Bill No. 1052 — Loans for Optometry and Dental Students. This bill provides that when the Board of Higher Education makes payments to an out-of-state institution of higher education on behalf of a student in optometry or dentistry, a note shall be obtained from the student in an amount equal to the difference between the resident and nonresident tuition at the institution attended by such student. (Committee on Medical Education and Government Administration)

House Bill No. 1053 — Pollution Control Authority of Health Department. This bill repeals certain Health Department authority for pollution control that has been outdated by other law. (Committee on Natural Resources "B")

House Bill No. 1054 — Pollution Control Authority of Health Department and Water Commission. This bill clarifies the authority of the Health Department and the Water Commission to require that plans and specifications for waste treatment facilities be submitted. (Committee on Natural Resources "B")

House Bill No. 1055 — Air Pollution Control Advisory Council. This bill adds a representative of the environmental sciences to the Air Pollution Control Advisory Council. (Committee on Natural Resources "B")

House Bill No. 1056 — Solid Waste Management. This bill authorizes the Health Department to regulate and require the planning and construction of solid waste management facilities. (Committee on Natural Resources "B")

House Bill No. 1057 — Air Pollution Control. This bill provides a public policy on air pollution and authorizes the Health Department to control air

pollution through a system of permits. The department is authorized to set and enforce standards for the prevention, abatement, and control of air pollution. (Committee on Natural Resources "B")

House Bill No. 1058 — Environmental Policy. This bill establishes a public policy on the environment and requires all agencies to take affirmative action to implement that policy. It requires agencies to prepare environmental impact statements and allows any state resident to maintain a legal action to enforce compliance. (Committee on Natural Resources "B")

House Bill No. 1059 — Environmental Law Enforcement. This bill allows any state agency, person, or political subdivision aggrieved by the violation of an environmental law, rule, or regulation to bring a legal action to enforce the law, rule, or regulation. (Committee on Natural Resources "B")

House Bill No. 1060 — Weather Modification. This bill establishes a Weather Modification Board to regulate weather modification operations by a system of permits and licenses. The State is authorized to contract with private weather modification controllers in order to provide weather modification operations to counties on a 50/50 matching fund basis. (Committee on Natural Resources "B")

House Bill No. 1061 — Water Appropriation Permits. This bill ratifies any conditions attached to water appropriation permits issued before the effective date of the bill and limits those conditions to be attached to permits issued after the effective date of the bill to those conditions directly affecting the use and appropriation of water. (Committee on Natural Resources "B")

House Bill No. 1062 — Surface Owner Protection. This bill provides for written notice and surface owner consent before a permit to strip mine may be issued. It also provides for surface damage and disruption payments to repay the owner for loss of property value and loss of income from the land. Furthermore, it provides that the mineral developer has the financial obligation to reclaim strip-mined land. In the event the owner or lessee of the mineral owner cannot agree on damages and the surface holder's consent cannot be obtained, the court may determine the damages. (Committee on Resources Development)

House Bill No. 1063 — Municipal Bond Bank. This bill provides for the establishment of a municipal bond bank within the Bank of North Dakota and provides for the purchase of municipal bond issues by the bond bank and the sale of bond bank bonds. It also creates a reserve fund for the security of bondholders who have purchased bond

bank bonds. (Committee on State and Federal Government)

House Bill No. 1064 — Radio Communications. This bill provides for the appropriation of approximately \$1.5 million for the purchase of new equipment and the maintenance and operation of the state law enforcement radio communications network for the next biennium. (Committee on State and Federal Government)

House Bill No. 1065 — Teletype Communications. This bill provides for the appropriation of approximately \$340,000 for the purpose of installing an upgraded law enforcement teletype communications system and for the purpose of operating that system for the biennium. (Committee on State and Federal Government)

House Bill No. 1066 — Drivers' License Fees. This bill amends the section which provides that drivers' license fees should be paid into the General Fund and provides that they be placed in the Highway Fund. (Committee on Transportation)

House Bill No. 1067 — Rural Transportation Assistance Program. The bill amends the authority of the Highway Commissioner to expend money to include the authority to spend money to establish a surface transportation system. It further provides that the Commissioner shall not operate the system, but only that he may receive and expend the funds to establish the system. (Committee on Transportation)

House Concurrent Resolution No. 3001 — Study of Assessment Districts. This resolution calls for a study by the Legislative Council of the feasibility of assessing by school district or some other political subdivision boundaries. (Committee on Education "B")

House Concurrent Resolution No. 3002 — Mental Institution Commitment Procedures. This resolution directs the Legislative Council to study the mental health and retardation commitment procedures, and in-hospital custody and treatment procedures. (Committee on Judiciary "A")

House Concurrent Resolution No. 3003 — Coordination in the Delivery of Human Services. This resolution directs the State Departments of Health and Social Services and the directors and board members of area social service centers and comprehensive mental health centers to take such action as may be necessary to coordinate the delivery of human services on the local level during the next biennium. (Committee on Medical Education and Government Administration)

**House Concurrent Resolution No. 3004 —
Legislative Council to Study Feasibility of State
Department of Human Services and to Study the
Division of Vocational Rehabilitation. This
resolution directs the Legislative Council to study
the benefits of the creation of a Department of**

**Human Services and among other departments the
Department of Health and Social Services. It also
calls for a study of the results of the transfer of the
Division of Vocational Rehabilitation to the State
Social Service Board. (Committee on Medical
Education and Government Administration)**