

TABLE OF CONTENTS

	PAGE
Summary of Committee Reports	I-XII
North Dakota Legislative Council	
Committee Membership and Staff	1-6
Chairman's Letter	7
History and Functions of the	
Legislative Council	8-9
Report and Recommendations	
Administrative Rules	
Administrative Agency Rules Review	11
Review of Current Rulemaking	11
Department of Health and Consolidated Laboratories —	
Laboratory Fee Amounts	12
Tax Commissioner — Oil and Gas Valuation Rules —	
Administrative Hearing Procedures	12
Department of Human Services — Child Support Guidelines.....	12
Department of Human Services — Nursing Home Ratesetting	
Rules	12
Commissioner of Insurance — Risk Retention Group Rules	13
Administrative Agencies Practice Act.....	13
North Dakota Century Code Section 28-32-01.....	13
North Dakota Century Code Section 28-32-02.....	14
Recommendations.....	14
Table A — Statistical Summary of Rulemaking.....	14
Advisory Commission on Intergovernmental Relations	
County Social Service Employees.....	16
Recommendation	17
Solid Waste Management Rules.....	17
Conclusion.....	17
Regional Law Enforcement Authorities.....	17
Conclusion.....	18
Political Subdivision Levy Authority	18
Recommendation	18
Local Election Consolidation	18
Recommendation	18
Joint or Cooperative Action of Political Subdivisions	19
Conclusion.....	19
Priorities for Future Study	19
Agriculture	
Malting Barley Study.....	20
Background	20
Testimony.....	20
Conclusion.....	20
Liens and Security Interests Relating to Farm Products Study	20
Background	20
Testimony.....	21
Recommendation	21
Pesticide Waste and Pesticide Container Study.....	21
Background	21
Federal Law	22
State Law	22
North Dakota Waste Management Task Force	23

Programs in Other States	23
Waste Pesticides Collection and Disposal Programs	23
Pesticide Container Collection and Disposal Programs	24
Testimony and Committee Considerations	24
Recommendation	26
Red River Diking Review	26
Background and Testimony	26
Conclusion	26
Reclamation Research Reports	26
Reclamation Research Advisory Committee	26
Land Reclamation Research Center	27
Conclusion	27

Budget Section

Status of the State General Fund	30
General Fund Balance	30
Revenue Revisions	30
1989-91 Appropriation Adjustments	31
Referendum Appropriation Reductions	31
Budget Stabilization Fund	31
Alternative Revenue Projections	32
Enhanced Audit Program	32
Appropriation Process Study	32
Background	33
Findings	33
Recommendation	33
ARC Lawsuit	34
Background	34
Findings	34
Federal Funds	34
State Board of Higher Education	35
Tuition Rates	35
Adjutant General	35
Armories	35
Budget	35
Oil Tax Collections	35
Tour Groups	36
Other Action	37

Budget Committee on Government Administration

Elected Officials' Compensation — Court Unification	38
Background	38
Findings	38
Elected Officials' Compensation	38
Court Unification	39
Conclusions and Recommendations	41
Elected Officials' Compensation	41
Court Unification	41
Occupational and Professional Licensing Fees	42
Background	42
Findings	42
Conclusion	43
State Property Insurance Coverage	43
Background	43
Findings	43
Recommendations	43
Reports on Pay Equity	43
Background	43
Findings	44
Conclusion	44
Proposed Judicial Districts	45

Budget Committee on Government Finance

Bank of North Dakota Purposes, Powers, Duties, and Operations	46
Background	46

Committee Review.....	46
Recommendations.....	47
Bank of North Dakota-Related Agricultural Loan Programs.....	47
Background.....	47
Recommendations.....	48
Higher Education Loan Programs and Tuition.....	48
Background.....	48
Recommendations.....	48
State Forester Price Levels.....	49
Background.....	49
Recommendations.....	49
State Retirement Funds' Actuarial Valuation Reports.....	49
Background.....	49
Actuarial Valuation Reports.....	49
Conclusion.....	50
Group Health Insurance Program Contingency Reserve fund.....	50
Monitoring the Status of Appropriations.....	50
Background.....	50
Status of Appropriations of Major Agencies.....	50
Status of the General Fund.....	51
Agency Compliance with Legislative Intent.....	51
Tour Groups.....	51
Other Committee Action.....	52

Budget Committee on Human Services

Study of Services for the Mentally Ill and Chemically Dependent.....	53
Background.....	53
Budget Reductions.....	53
Status Reports on Regional Services.....	53
State Hospital Review.....	56
Private Service Providers.....	56
Availability of Qualified Mental Health and Addiction Professionals.....	57
Indian Health Service Payments.....	58
Tour Groups.....	58
Recommendations and Conclusions.....	58
Human Service Delivery System Study.....	58
Organ and Tissue Transplant Study.....	58
North Dakota Organ Donation Procedures.....	59
Financial Assistance for Transplant Procedures.....	59
Cost of Transplants.....	60
Other States' Reimbursement Systems.....	60
Considerations and Recommendations.....	60
Child Care Study.....	61
Background.....	62
Findings.....	62
Pending Federal Legislation.....	63
Conclusion.....	63

Budget Committee on Long-Term Care

Study of In-Home and Community-Based Services for the Elderly and Disabled.....	64
1989-91 Biennium Appropriations.....	64
Department of Human Services' Status Reports.....	64
Department of Human Services' Recommendations.....	65
Other Testimony.....	65
Recommendations.....	66
Long-Term Care Property Cost Reimbursement Study.....	66
Case Mix Reimbursement.....	66
Property Cost Review.....	66
Testimony.....	67
Optional Supplementation and General Assistance Payments for Basic Care Facilities.....	67
Recommendations.....	68
Monitoring Implementation of the Family Support and Medicare	

Catastrophic Coverage Acts.....	68
Background.....	68
Family Support Act of 1988.....	68
Medicare Catastrophic Coverage Act of 1988.....	69
Comparison of 1989-91 Biennium Appropriations and Requested Amounts for 1991-93 Biennium.....	69
Family Support Act.....	69
Medicare Catastrophic Coverage Act.....	70
Department of Human Services' Progress Reports.....	71
Aid to Families with Dependent Children Program.....	71
Recommendations.....	71
Other Areas.....	72
Human Service Delivery System Study.....	72
Department of Human Services' Budget Reductions.....	72
Review of Other States' Human Service Delivery Systems.....	72
Department of Human Services' Recommendations.....	72
County Social Services Time Study.....	73
Proposals and Observations Regarding Current Delivery System.....	73
Multicounty Social Service District Formation.....	74
Recommendations.....	74

Education Finance

School Finance Studies.....	75
Foundation Aid Program and Tuition Apportionment Payments.....	75
Transportation Program.....	77
Special Education Reimbursements.....	77
Equalization.....	77
Mineral Tax Sources.....	77
Federal Impact Aid Program.....	78
Impact of Selected 1989 Legislation.....	78
County Superintendents of Schools.....	78
Ending Balances of School Districts.....	79
Educational Telecommunications.....	79
Testing.....	80
Accreditation of Schools.....	80
Testimony and Committee Considerations.....	80
Income Factors and In Lieu of Tax Revenues.....	80
Guaranteed Foundation Program.....	82
Guaranteed Tax Base Funding.....	83
Classroom Unit Funding.....	83
70/30 Funding Concept.....	84
Tuition Apportionment Distributions.....	84
Transportation Aid.....	84
Conclusion.....	84
School District Restructuring.....	84
Recommendation.....	86
Special Education Interagency Agreements.....	86
Conclusion.....	86
Special Education Integration.....	86
Conclusion.....	87

Elections

Election Process Study.....	89
Background.....	89
Mail Ballot Elections in Other States.....	89
Mail Ballot Experiment.....	90
Petition Time Deadlines.....	90
Ballot Structure.....	90
Conflicts in North Dakota Election Laws.....	90
Referral Petition Signature Requirements.....	91
Selected Other States' Petition Requirements.....	91
Montana.....	91
South Dakota.....	91
Wyoming.....	91
Minnesota.....	91

Testimony and Committee Considerations	91
Recommendations	92
Primary Election Process Study	92
Background	92
History of the Primary Election in North Dakota	92
North Dakota Primary Election Law	92
Presidential Preference Primary Election	93
Primary Election Ballot	93
Selected States' Laws Regarding Primary Elections	93
Testimony and Committee Considerations	93
Committee Recommendations	93

Game and Fish

Motorboat License Fees	94
Background	94
Testimony	95
Conclusion	95
Use and Allocation of Interest Income from the Game and Fish	
Operating Fund	95
Background	95
Testimony	95
Conclusion	96
Bonding of County Auditors and Agents Appointed by County	
Auditors to Issue Game and Fish License or Stamps	96
Background	96
Testimony and Committee Considerations	96
Conclusion	96
Game and Fish Laws and Rules	96
Background	96
Committee Considerations	96
Posting	97
Licenses and Permits	98
Boating Regulations	98
Enforcement of Game and Fish Laws and Rules	99
Administration	100
Orders and Proclamations of the Governor	101
Private Shooting Preserves	101
Payments in Lieu of Taxes	101
Recommendations	101

Garrison Diversion Overview

History of the Project	104
Canadian Concerns	105
Garrison Diversion Unit Commission	105
Authorization Legislation	106
Garrison Municipal, Rural, and Industrial Water Supply Program	106
Legal Issues	107
Project Update	108
Appropriations	108
Mid-Dakota Reservoir	108
Inspector General's Report	108
Rate of Progress	108
Assumption of Operation and Maintenance Activities by	
the Conservancy District	109
Increased State and District Activities in Regard to the Project	109
Other Project Features and Water-Related Issues	109
Statement by the President	110

Higher Education System Review

Committee Action	111
Committee Recommendations	113
Committee Considerations	113

Industry and Business

Health Care Insurance Study.....	114
Background.....	114
State Law and Access to Health Care Insurance and Services.....	114
Medical Assistance.....	114
Comprehensive Health Association of North Dakota.....	115
Selected State and Federal Enactments or Proposals.....	115
Hawaii.....	115
Massachusetts.....	115
Washington.....	116
Proposed Federal Legislation.....	116
Employee Retirement Income Security Act.....	117
Testimony and Committee Considerations.....	117
Health Insurance Coverage Survey Results.....	117
Bill Drafts Considered.....	118
Part-time Employee Access.....	118
Basic Health Insurance Coverage.....	118
Mandate Reviews.....	119
Medical Assistance Eligibility.....	119
Subsidized Health Insurance.....	119
Recommendations.....	120
Controlled Substances Reporting Center Study.....	120
Background.....	120
Federal Law Governing Dispensing of Controlled Substances.....	120
State Law Governing Dispensing of Controlled Substances.....	120
Other States' Practices.....	121
Testimony and Committee Considerations.....	121
Conclusion.....	122

Jobs Development Commission

Jobs Development Study.....	123
Background.....	123
North Dakota 2000 Committee — Commission Considerations.....	125
Human Capital - Compact for Education Excellence - Establishment of the North Dakota Entrepreneurial Challenge.....	126
Financial Capital — Development Bank of North Dakota.....	127
Research and Technology Transfer - Commission on Science and Technology.....	128
Physical Infrastructure — Coalition for Statewide Infrastructure Projects.....	128
State and Local Government — Campaign for State Government Reform.....	128
North Dakota Rural Development Academy — Governor's Committee of 34.....	129
Additional Commission Considerations.....	131
Recommendations.....	131
Tourism and Natural Resource Enhancement Study.....	132
Background.....	132
Tourism Master Plan Proposal and Contract.....	132
Tourism — Profile of Travelers.....	132
Master Plan Recommendations.....	133
Commission Considerations.....	134
Tourism Department, State Tourism Policy, and Grant Programs.....	134
Bed and Breakfast Facilities.....	135
Sunday Opening.....	135
State Lodging Tax.....	135
Parks and Recreation Fees.....	136
Highway Signs.....	136
Historical Resources.....	136
Recommendations.....	136

Judiciary

Charitable Gaming Studies.....	137
Charitable Gaming — Early History.....	137

Advent of Charitable Gaming	137
Charitable Gaming Terminology	137
Charitable Organizations.....	137
Games Permitted.....	138
Expense Limits	138
Administration of the Charitable Gaming Law	138
Enforcement of the Charitable Gaming Law	139
Taxation of Charitable Gaming Proceeds	139
1987 and 1989 Legislation	140
Testimony and Committee Considerations	140
Eligible Uses	140
Taxes	141
Licensing.....	142
Enforcement — Tip Pooling.....	142
Legislative Overview.....	143
State Gaming Commission	143
Compulsive Gambling.....	143
Recommendations.....	143
Uniform Laws Review	
Uniform Foreign-Money Claims Act.....	144
Uniform Statutory Rule Against Perpetuities	144
Uniform Nonprobate Transfers on Death Act (1989)	144
Amendments to Uniform Commercial Code — Article 1.....	145
Uniform Commercial Code Article 3 — Negotiable Instruments	145
Uniform Commercial Code Article 4A — Funds Transfers.....	145
Uniform Commercial Code Article 6 — Bulk Transfers (Optional Repeal or Revision).....	145
Recommendations.....	146
Statutory Revision	146
Attachment Procedures — Recommendation	146
Tax Credits for Residents of Dissolved and Annexed School Districts — Recommendation.....	146
Technical Corrections — Recommendation.....	147

Legislative Audit and Fiscal Review

State Auditor	148
Audit of the State Auditor's Office.....	148
Suggested Guidelines for Performing Audits of State Agencies	148
State Labor Department's Procedures for Processing Claims	149
Auditing Procedures Regarding the Comprehensive Annual Financial Report.....	149
Committee Review	149
Recommendations.....	150
1989-91 Deficiency Appropriation	150
Accreditation Program	150
University of North Dakota Accounts Receivable.....	150
Fine Revenues	150
Statewide Accounting and Management Information System	151
Other Action	151
Accounts Receivable	151
State of North Dakota Outstanding Indebtedness	151
Receipt of Alchem, Ltd., and Cenex Agrifuels Audit Reports	151
Workers Compensation Fund	151
Special Fund Spending Authority	152
Student Loan Trust Audit Report.....	152
Other Reports	152

Legislative Management

Legislative Rules	153
Duties of President and President Pro Tempore	153
Senate and House Calendars	153
Senate and House Journals	153
Legislative Guests	154
Clincher Motion	154
Division of Questions.....	154

Legislative Deadlines	154
Bill Copies	154
State and Federal Government and Human Services and Veterans Affairs Committees	155
Joint Constitutional Revision Committee	155
Meetings of Committee Chairmen	155
Notice of Hearings	155
Committee Reports	155
6th to 11th or 14th Order on Same Day	156
Form and Style Requirements	156
Consent Calendar	156
Executive Agency and Supreme Court Bill Introduction	156
Reprinting of Amended Bills	156
Designated Smoking Areas	156
Other Rules Proposals Considered	157
Reprinting of Rules Manual	157
Recommended Bills	157
Session Arrangements	158
Legislator's Automated Workstation (LAWS) System	158
Senate and House Journals	158
Journal Distribution Policy	159
8 1/2" x 11" Journals	159
Senate and House Calendars	159
Legislative Internship Program	159
Legislative Tour Guide Program	159
Legislative Document Library Distribution Program	159
Bill Status Report System Access	160
Bill Status Report Subscription Fee	160
Bill Subscription Fee	160
Bill Distribution Policy	160
Appropriations Bills	160
Doctor of the Day Program	160
Chaplaincy Program	160
Session Employment Coordinators	161
Session Employee Orientation and Training	161
Bill and Journal Room Employee	161
Legislator Supplies	161
Incoming WATS Lines	161
Legislative Expense Reimbursement Policy	161
Television Coverage	162
Organizational Session Agenda	162
State of the State Address	162
State of the Judiciary Address	162
Tribal Address	162
Legislative Compensation Commission Report	162
Military Exchange Program	162
Legislative Fitness Day	162
Ceremony Marking Burning of State Capitol	163
Special Session Arrangements	163
Legislative Council Authority	163
Recommended Bill	163
Legislative Process Study	163
Background	163
Legislative Procedures	163
Use of Legislative Days in Other States	164
Recent Legislative Proposals	164
South Dakota Legislature	164
Wyoming Legislature	164
Survey of Legislators	165
Recommended Study Resolution	165
Legislative Employee Compensation Study	165
History of Legislative Employee Compensation	165
1989 Legislative Assembly Employee Compensation	165
Committee Clerks	165
Conclusion	166

State of the Law with Respect to Legislative Apportionment Study	166
North Dakota Law	166
Federal Case Law	166
Conclusion	166
Legislative Apportionment Information for 1990 Census Tracts	166
Background	166
Phase 1 — Block Boundary Suggestion Project	166
Phase 2 — Census Block Maps	166
1991 Redistricting Concerns	167
Reapportionment Services	167
Constitutional Requirements Governing Amendments to Bills	167
Conclusion	167
Appropriation for Improvements to the Legislative Wing	167
Background	167
Committee Room Pictures	168
Voting System Enhancements	168
Roughrider Room Microphones	168
Senate and House Sound Systems	168
Chamber Wiring	168
Mailboxes	168
Postponed Projects	168
Committee Hearing Schedule Monitor System	169
Memorial Hall Guidelines	169

Political Subdivisions

Building Code Study	170
State Building Code	170
Building Code Administration and Enforcement in Other States	170
Minnesota	170
South Dakota	171
Montana	171
Testimony and Committee Considerations	171
Recommendations	172
Solid Waste Management Study	172
Background	172
North Dakota Solid Waste Management and Land Protection Act	172
Federal Law	172
Underground Storage Tanks	173
Testimony	173
Committee Considerations	174
Recommendations	175
State and Federal Government Ownership of Land Study	176
Background	176
State and Federal Law	176
Amount of Land Owned by the State and Federal Governments in North Dakota	177
Testimony and Committee Considerations	177
Conclusion	177
Acquisition and Holding of Land by the State Study	177
Background	177
State Property Exempt from Taxation	178
Testimony and Committee Considerations	178
Recommendation	178

Regulatory Reform Review Commission

1989 Senate Bill No. 2320	179
Implementation of 1989 Senate Bill No. 2320	179
1990 Essential Telecommunications Price Factor	179
Use of Rate of Return to Monitor Rates Set Using the Essential Telecommunications Price Factor	180
Incentive Regulation Plans in Other States	180
The Minnesota Incentive Regulation Plan for U S West Communications	180
Ad Hoc Committee on 1989 Senate Bill No. 2320	181

Conclusion.....	182
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Retirement

Consideration of Retirement Proposals	183
Teachers' Fund for Retirement.....	183
Public Employees Retirement System.....	185
Other Retirement Plans	187
Other Employee Benefit Bills	188
Consolidation of Organizational and Investment Functions of the Public Employees Retirement System, the Teachers' Fund for Retirement, and the State Investment Board Study	188
Background.....	188
Statutory Provisions in Existence Prior to the Effective Date of 1989 Senate Bill No. 2030	188
Public Employees Retirement System.....	188
Teachers' Fund for Retirement.....	189
State Investment Board	189
Senate Bill No. 2030.....	189
Potential for Efficiencies in Combining Administrative and Investment Functions of the Public Employees Retirement System, the Teachers' Fund for Retirement, and the State Investment Board	191
Other States' Consolidation Activity and Investment Provisions	191
South Dakota	191
Montana	191
Minnesota.....	192
Testimony and Committee Considerations	192
Recommendations.....	193
Health Insurance Coverage for Retired Public Employees Study.....	193
Background.....	193
Retiree Health Benefits for Public Employees	193
Retiree Health Benefits Generally.....	193
PERS Health Benefits Plan	194
Senate Bill No. 2068 — Prefunding of Retiree Health Coverage for Retired Members of PERS and the Highway Patrolmen's Retirement System	195
Other State Retirement Plans Whose Members are not Eligible for Prefunding of Retiree Health Coverage.....	196
Retiree Health Insurance Plans of Other States.....	196
Summary of the States	196
Recent State Studies.....	196
Montana.....	196
Kansas.....	198
Testimony and Committee Considerations	198
Health Insurance Coverage for Retired Teachers	198
Health Insurance Coverage for Retirees Under the Teachers Insurance Annuity Association — College Retirement Equities Fund (TIAA-CREF) Retirement Plan	200
Health Insurance Coverage for Chapter 27-17 Judges	200
Health Insurance Coverage for Retirees Under the Job Service North Dakota Travelers Retirement Plan.....	200
Health Insurance Coverage for the Public Employees Retirement System Prior Service Retirees.....	200
Public Employees Retirement System Prefunded Retiree Health Benefit Plan Benefit Increase.....	201
Recommendations.....	201
Provision of Level Retirement Benefits Under the Teachers' Fund for Retirement Study.....	201
Background.....	201
Teachers' Fund for Retirement.....	201
Teachers' Insurance and Retirement Fund	202
Membership Characteristics, Benefit Formulas, and Contribution Rates Under the Teachers' Fund for Retirement	202
Testimony and Committee Considerations	204

Proposals Considered	204
Conclusion.....	205

Taxation

Tax System Study	206
Background	206
Tax Balance and Burden Comparisons	206
Alcohol and Tobacco Taxes.....	207
Sales Tax Exemptions	207
Federal Fuels Tax Allocations	208
Coal Taxes.....	208
County Auditors' Concerns	208
Conclusion.....	208
Property Tax Study.....	208
Background	208
Findings	209
Recommendations to the Committee.....	210
Lakeshore Property Assessments	210
Tax-exempt Property	210
Conclusion.....	210

Study Resolutions and Assignments for the 1989-90 Interim

Study Resolutions Prioritized.....	211
Study Resolutions Not Prioritized.....	215

Explanation of Legislative Council Bills and Resolutions

House Bill and Resolution Summaries	217
Senate Bill and Resolution Summaries	220

SUMMARY BRIEFLY — THIS REPORT SAYS

ADMINISTRATIVE RULES COMMITTEE

The Council reviewed all state administrative agency rulemaking actions from November 1988 through October 1990. The Council reviewed the procedures for distribution of administrative agency proposed rulemaking notices and determined the filings should be mailed out monthly on or about the first of each month and that the charge for providing the filing should be \$50 annually. As of October 1990 there were 10 subscribers to the service.

The Council reviewed several sections of the Administrative Agencies Practice Act, North Dakota Century Code Chapter 28-32. The Council recommends House Bill No. 1024 to amend the definition of rule to provide an exemption for any material, including a guideline, interpretative statement, statement of general policy, manual, brochure, or pamphlet, that is merely explanatory and not intended to have the force and effect of law. The Council also recommends House Bill No. 1025 to provide that 30 days must elapse between the date the Legislative Council mails copies of an agency's proposed rulemaking notice and the end of the period in which written or oral data, views, or arguments concerning the rules will be considered.

ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS

The Advisory Commission on Intergovernmental Relations studied the potential for allowing county governing bodies greater control of salaries and benefits for county social service employees. Many social service programs administered at the county level are funded in large measure by federal funds and federal law requires that the agency administering these programs must operate under a merit system of personnel administration. Because federal law is dominant in this area, it appears that there is no opportunity for state law to relieve counties of the obligation of merit system personnel administration. In addition, counties are allowed use of the state merit system at no cost to counties. The commission recommends House Bill No. 1026, which would delay the effectiveness of salary increases mandated by changes to the state merit system classification and compensation from July 1 after a legislative session, which falls in the middle of a county budget year, to the following January 1.

The commission studied property tax levy authority of political subdivisions. Every Legislative Assembly since 1981 has enacted property tax optional percentage levy increase authority for political subdivisions because of property tax assessment revisions made in 1981. The commission recommends House Bill No. 1027, which is similar to 1989 legislation that expires in 1991, and which would allow taxing districts to have the option of using previous levies in dollars as the basis to determine current levy limitations. House Bill No. 1027 has no expiration date and allows a taxing district to levy up to five percent more for a budget year than was levied in dollars in the base year. The base year is defined to be the taxable year with the highest amount levied in dollars of the three taxable years immediately preceding the budget year.

The commission studied the potential for consolidation of local elections. Under existing law elections of political subdivisions are required or allowed to be held on various dates either in each even-numbered year or each year. The commission recommends Senate Bill No. 2023 to consolidate elections of school districts, cities, and park districts with the statewide primary election to be held on the second Tuesday of June in each even-numbered year. Senate Bill No. 2023 would become effective with the primary election of 1992 and contains transition provisions to provide that the 1993 election will be the last regular school election held in an odd-numbered year. The bill is intended to reduce costs of local elections by consolidation and to increase voter interest and turnout.

The commission studied joint or cooperative action of political subdivisions under existing law. It appears that existing law provides ample authority to allow political subdivisions to combine efforts in providing services. The commission makes no recommendation for changes in state law regarding cooperative agreements among political subdivisions. It appears that the greatest need in this area is for information to allow political subdivision

officials to become aware of the potential for combining services. The commission intends to play a role in this education process in the future.

AGRICULTURE COMMITTEE

The Council studied the problems associated with the grading and purchasing of barley for malting purposes. The Council makes no recommendation for legislative action.

The Council studied the laws relating to state and local filing of liens and security interests relating to farm products. The Council recommends Senate Bill No. 2024 requiring the Secretary of State to establish a computerized central notice system under which a person could perfect a security interest in farm products or create a statutory agricultural lien by filing at the Secretary of State's office or at any register of deeds' office in the state.

The Council studied the feasibility of establishing an unused pesticide and pesticide container disposal program. The Council recommends Senate Bill No. 2025, requiring the Commissioner of Agriculture, in consultation with a number of other state officials and representatives of various interests, to design and implement a pilot project to collect and recycle or dispose of agricultural pesticide containers.

The Council received information on the effect of diking on the Red River valley and the damage caused by the 1989 flood.

The Council received annual reports from the Reclamation Research Advisory Committee on the status of all the reclamation research projects, conclusions reached, and future goals and objectives of the committee. The Council also received annual reports from the Land Reclamation Research Center which described and analyzed each reclamation project.

BUDGET SECTION

The Council received status reports of the state general fund for the 1989-91 biennium from the Office of Management and Budget, monitored the state's progress in providing services mandated by the Association for Retarded Citizens' lawsuit, and reviewed the Governor's authority to transfer funds from the budget stabilization fund.

Because of the defeat of the sales tax, individual income tax, and gas tax measures on the December 1989 special election ballot, the Council approved general fund agency budget reductions of \$95.8 million, aid to political subdivisions reduction of \$2.15 million, and highway fund budget reductions of \$12.7 million.

The Council requested that the Office of Management and Budget present alternative revenue projections for the 1991-93 biennium to the 1991 Legislative Assembly at the organizational session and that the alternatives include the effect on the executive budget revenue forecast of high oil prices, low oil prices, and a 10 percent change in gross farm income.

The Council recommended that the Office of Management and Budget, when preparing the executive budget recommendations and appropriation bills for major consolidated departments (Department of Human Services, Department of Corrections and Rehabilitation, and Department of Transportation, etc.), include in separate subdivisions appropriations to each institution and major program under the consolidated department's control and that legislative intent be written into appropriation bills providing guidance for expenditures relating to salaries and wages, program changes, etc.

The Council received reports on the enhanced audit program, the state's oil tax collections, 1987-89 federal funds available to North Dakota state government, the Department of Human Services' progress in developing and expanding community programs, the Budget Committee on Long-Term Care's findings and recommendations relating to the implementation of the Family Support Act and the Medicare Catastrophic Coverage Act, and reports from the Board of Higher Education regarding possible changes to student loan programs, salary increases, and on program reductions.

The Council approved the nonresident tuition rates set by the State Board of Higher Education, the Emergency Commission's request to spend in excess of \$500,000 from the state contingency fund, and the University of North Dakota's request to spend \$8.1 million of federal funds to construct an earth systems science building at the University of North Dakota. The Council denied the Adjutant General's request to close its armories at Cavalier, Hillsboro,

and Mandan.

Budget Section members, along with the Budget Committee on Government Finance and the Budget Committee on Human Services, visited major state agencies and institutions during the 1989-91 biennium to evaluate requests for major improvements and structures and to discuss problems of the institutions.

BUDGET COMMITTEE ON GOVERNMENT ADMINISTRATION

The Council evaluated the adequacy of compensation of the justices of the Supreme Court and judges of the district and county courts, legislators, and other elected officials. The Council did not recommend increasing the compensation for justices of the Supreme Court, judges of the district and county courts, legislators, and other elected officials and concluded that the Legislative Assembly will be in a better position to recommend compensation levels when it receives updated revenue estimates. However, the Council does believe that in order to achieve statewide equality within the judiciary, a unified court system must be established and therefore recommends Senate Bill No. 2026 to abolish county courts as of January 1, 1995; to provide for the establishment of a single trial court system consisting of eight judicial districts; and to reduce the number of district court judgeships from 53 to 42 by December 31, 1998. The bill also provides that on January 1, 1995, county court judges elected in 1994 would become interim district court judges with limited original jurisdiction and if an interim district court judge is elected to a district court judgeship or when the interim district court judgeship is abolished, 80 percent of the court revenue deposited in the county treasury is to be deposited in the state general fund. The Council also recommends Senate Bill No. 2027 to give all counties the authority to contract with the district court for county court services; to give the Supreme Court the authority to determine whether a vacant district court judgeship should be continued, abolished, or transferred to another judicial district; and to increase the civil jurisdictional limit of a county court judge from \$10,000 to \$15,000. In addition, the Council recommends Senate Bill No. 2028 to extend the term of a county court judge from four to six years, allowing county court judges to participate in the selection of the chief justice of the Supreme Court, and to allow district and county court judges to elect the presiding district court judge of their judicial district.

The Council studied the adequacy of property insurance coverage on state-owned property and the feasibility and desirability of providing business interruption insurance coverage to state agencies. The Council recommends House Bill No. 1028 to require that state-owned property constructed after 1939 be insured for replacement cost according to the underwriting guidelines of the state fire and tornado fund. The bill further requires that the Insurance Department conduct appraisals on state-owned property every six years and that the appraisal amount be adjusted annually in accordance with fire and tornado fund directives. The Council also recommends House Bill No. 1029 to give the state fire and tornado fund the authority to offer business interruption insurance to provide coverage for loss of income or additional expenses incurred because of a property loss. In addition, the Council recommends that audit reports prepared by the State Auditor contain information disclosing differences between the insured value of an entity's assets and their replacement cost.

The Council studied state payment of occupational and professional licenses, but took no action regarding state payment of occupational and professional licenses, believing the employment situations of each agency and institution vary so that the decision of whether or not to pay for an employee's license should be left to agency management.

In addition, as provided in 1989 House Bill No. 1035, the Council accepted the reports of the Central Personnel Division on its progress in implementing the pay equity recommendations of the 1989 Legislative Assembly. The Council asked that the division provide cost estimates to the 1991 Legislative Assembly on full implementation of the hazard factor so that it can determine whether the July 1, 1991, implementation date can be met.

BUDGET COMMITTEE ON GOVERNMENT FINANCE

The Council studied the purposes, powers, duties, management, and operations

of the Bank of North Dakota. The Council recommends Senate Bill No. 2029 to allocate the annual net income of the Bank of North Dakota on a percentage basis including 50 percent to the state general fund, 20 percent retained by the Bank, 10 percent to the partnership in assisting community expansion (PACE) fund, 10 percent to agricultural-related loan programs, and the remaining amount as allocated by the Legislative Assembly. The Council recommends that the Legislative Assembly be encouraged to include in the Bank's appropriation bill a separate section providing for a contingency appropriation allowing the Bank to respond to unforeseen events, including profit enhancement programs, subject to Budget Section approval.

The Council studied consolidating the various agricultural loan programs administered by the Bank of North Dakota. The Council does not recommend consolidating those programs since each agricultural loan program is unique and each program is established to address specific problems.

The Council studied the feasibility and desirability of providing incentives to North Dakota graduates to remain in North Dakota after graduation and increasing tuition at the institutions of higher education and providing low interest loans to students to cover the cost of increased tuition. The Council supports the nonsubsidized Stafford loan program authorized by the Industrial Commission during the 1989-90 interim. The Council does not recommend increasing tuition rates for low interest loans since the nonsubsidized Stafford loan program through the student loan trust will provide funding for low interest loans.

The Council studied the price levels the State Forester should establish for state nursery seeds and planting stock. The Council recommends House Bill No. 1030 to establish a State Forester reserve account to be used within limits of legislative appropriations by the State Forester subject to approval by the Legislative Council's Budget Section.

The Council received the actuarial valuation reports of the Public Employees Retirement System, Teachers' Fund for Retirement, and Highway Patrolmen's Retirement System.

The Council monitored the status of major state agency and institution appropriations. The review focused on revenues and expenditures of the institutions of higher education and the charitable and penal institutions, the appropriations for the foundation aid program, and the appropriations to the Department of Human Services for aid to families with dependent children and medical assistance. In addition, the Council monitored agency compliance with legislative intent included in 1989-91 appropriations.

BUDGET COMMITTEE ON HUMAN SERVICES

The Council reviewed the implementation of additional community services for the mentally ill and chemically dependent and the effect those services have on future services to be provided by the State Hospital. The Council recommends House Concurrent Resolution No. 3001 for additional Legislative Council study, during the 1991-92 interim, of alternative uses of the State Hospital and to monitor the establishment of community programs for the mentally ill and chemically dependent. The Council recognizes adequate community services for the mentally ill and chemically dependent have not been developed; however, the Council supports the provision and continued development of community services as an alternative to admission to the State Hospital.

The Council studied organ and tissue transplant policy and cost reimbursement. The Council recommends Senate Bill No. 2030 to require any health care facility to receive health Council approval through the certificate of need program before the facility establishes or expands an organ or tissue transplant center in North Dakota. The Council also recommends Senate Bill No. 2031 to establish transplantation guidelines for state agency programs and providing additional State Health Council duties and responsibilities relating to organ and tissue transplant procedures.

The Council studied child care issues and needs, including the feasibility and costs of providing child care support to low income working families. Because of significant changes that may result from pending federal child care legislation and the uncertainty of the outcome of that legislation, the Council does not make any recommendations regarding the study of child care.

The Council studied the human service delivery system and recommends Senate Bill No. 2033 to encourage voluntary establishment of multicounty social service districts and to appropriate \$250,000 from the general fund for financial incentives and costs of developing the districts.

BUDGET COMMITTEE ON LONG-TERM CARE

The Council studied in-home and community-based services for the elderly and disabled including a review of alternative methods to make services more affordable, a monitoring of payments made by the Department of Human Services through the service payments to the elderly and disabled (SPED) and long-term care programs, and a review of the impact of providing exemptions to minimum wage and hour standards for individuals providing services. Although the Council is not recommending a bill on this subject, its recommendation would support the repeal of the preadmission assessment program and encourage the Department of Human Services to provide information through senior agencies and senior centers on available in-home and community-based services.

The Council studied current and alternative methods of reimbursing nursing home property costs including a review of other states' methods that eliminate consideration of actual interest and depreciation costs. The Council recommends House Bill No. 1031 to change nursing home property cost reimbursement for rate years beginning on or after January 1, 1991. The bill would require reimbursement for interest and depreciation to be based on a facility's actual costs resulting from a good faith arms length purchase agreement, with the property basis limited to the lowest of purchase price, current reproduction costs, or fair market value, without regard to the previous owner's basis. The council was informed of budget cuts that reduced state matching of county payments for individuals in basic care facilities. The Council recommends Senate Bill No. 2032 to provide a deficiency appropriation for the 1989-91 biennium to the Department of Human Services for state matching of county optional supplementation and general assistance payments for individuals in basic care facilities for the period August 1990 through June 1991 in the amount of \$481,000 from the general fund. This amount, along with \$300,000 made available from the department's August 1990 general fund budget unallotment, provides sufficient funds for the state matching of these payments for the last 11 months of the 1989-91 biennium. The Council also recommends that the state support matching general assistance and optional supplementation payments for individuals in basic care facilities at a 50 percent level during the 1991-93 biennium and that the Legislative Council study, during the 1991-93 interim, the desirability of the establishment of a state basic care program including the definition of services to be provided and state, county, and federal financial responsibilities.

The Council monitored the Department of Human Services' implementation of federal Family Support and Medicare Catastrophic Coverage Acts and the effect of the Acts on human service programs. The Council recommends the 1991 Legislative Assembly consider funding increases in AFDC payment levels in excess of the five percent annual increases requested by the Department of Human Services in its 1991-93 budget request, to the extent funds are available. The Council also recommends House Concurrent Resolution No. 3002 for the continued Legislative Council monitoring of federal Family Support and the Medicare Catastrophic Coverage Acts during the 1991-92 interim.

The Council studied alternatives for restructuring the human service delivery system in North Dakota. The Council recommends Senate Bill No. 2033 to amend North Dakota Century Code Chapter 50-01.1 to encourage the voluntary establishment of multicounty social service districts and appropriating \$250,000 from the general fund for financial incentives to encourage the creation of multicounty social service districts. The Council supports introduction of a bill by the Department of Human Services during the 1991 Legislative Assembly providing departmental membership on the Educational Telecommunications Council established in Chapter 15-65.

EDUCATION FINANCE COMMITTEE

The Council studied education finance issues, including adequate funding for school districts, inequities in distribution of aid, extent of local effort, other funding sources such as federal programs and energy taxes, and reviewed

the operation and effect of laws passed during the 1989 legislative session. The Council recommends Senate Bill No. 2034 to establish a separate reorganization procedure for school districts that restructure under North Dakota Century Code Chapter 15-27.6 and to establish planning grants and supplemental payments for school districts that enter into cooperative arrangements to purchase or provide educational services.

The Council received a report regarding the status of interagency agreements for the provision of education and related services to handicapped students. The Council received a report on pilot projects that integrate handicapped children into regular education classrooms. The Council received a report regarding the restructuring of school district boundaries and the number of interim school districts.

ELECTIONS COMMITTEE

The Council studied all aspects of the election process with emphasis on new voting concepts that would make the process more timely and cost effective. The Council adopted guidelines and Renville County conducted the 1990 primary election by mail ballot. The Council recommends House Bill No. 1032 to authorize political subdivisions to conduct mail ballot elections at elections not held in conjunction with a statewide election; House Bill No. 1033 to authorize counties to conduct mail ballot primary elections; Senate Bill No. 2035 to provide that initiative, referendum, and recall petitions must be submitted to the Secretary of State by 5:00 p.m. on the day designated as the deadline for submitting the petition; and Senate Concurrent Resolution No. 4001 to direct the Legislative Council to study North Dakota election laws, with an emphasis on resolving inconsistencies and conflicting provisions and on establishing more uniform and effective election procedures.

The Council studied the primary election process, with emphasis on developing recommendations for a mechanism for selecting nominees which is timely and cost effective. The Council makes no recommendation for legislative action.

GAME AND FISH COMMITTEE

The Council studied the appropriateness of the amount and current basis for the determination of motorboat license fees, the use and allocation of the interest income from the game and fish operating fund, the laws and rules concerning the issuance of game and fish licenses and the role of county auditors in the issuance of game and fish licenses, and the state's game and fish laws and rules.

The Council recommends House Bill No. 1034 to provide that a person who is convicted of a Class B misdemeanor for trespassing would be guilty of a Class A misdemeanor for the second or subsequent offense within a two-year period. The bill provides that if the person is convicted of hunting on posted land or trapping on private land without the permission of the owner then that person's hunting, fishing, and trapping privileges would be suspended for a period of one year for the first conviction, two years for the second conviction, and three years for the third or subsequent conviction. The Council also recommends House Bill No. 1035 to enable the Game and Fish Commissioner to establish combination game and fish licenses; House Bill No. 1036 to allow guides and outfitters to purchase a license to enable them to provide residents or nonresidents, for compensation, big game guiding and outfitting services and one antlered white-tailed deer license or one male antelope license or both; House Bill No. 1037 to enable the Game and Fish Commissioner to establish a combination license consisting of a nonresident big game bow license and a nonresident wild turkey bow permit; Senate Bill No. 2036 to establish resident commercial clam, nonresident commercial clam, and resident clam licenses; House Bill No. 1035 to require that individuals obtaining gratis landowner hunting licenses be either a person who leases land for agricultural purposes and who actually farms or ranches that land or a landowner; House Bill No. 1039 to require a certificate of title for motorboats; House Bill No. 1040 to require the State Treasurer to transfer annually from the highway tax distribution fund, before allocation of the fund, to the game and fish fund an amount equal to the tax collected on 70 gallons of motor fuel multiplied by the number of motorboats registered pursuant to North Dakota Century Code Section 20.1-03-12; Senate Bill No. 2037 to

require the Game and Fish Commissioner to establish by rule the minimum property damage for which a collision, accident, casualty, or liability report would have to be filed with the commissioner; House Bill No. 1041 to prohibit the spotting or ascertaining of the location of bighorn sheep, moose, or elk from aircraft for the purpose of hunting or taking or for the purpose of guiding another person in the hunting or taking of that game; Senate Bill No. 2038 to establish implied consent to chemical testing for purposes of determining intoxication while being afield with a gun or other firearm or bow and arrow; Senate Bill No. 2039 to establish implied consent to chemical testing for purposes of determining intoxication while operating a motorboat or vessel; Senate Bill No. 2040 to allow the Governor to establish by proclamation the hours for hunting game birds and protected animals; Senate Bill No. 2041 to require that no person born after December 31, 1961, could purchase or obtain a hunting license unless that person has satisfactorily completed a hunter safety education course; Senate Bill No. 2042 to require hunters to wear a head covering and outer garment above the waistline, both of daylight fluorescent orange color, totaling 400 square inches of solid fluorescent orange color, while hunting big game; Senate Bill No. 2043 to include mountain lions and black bears within the definition of fur-bearers; Senate Bill No. 2044 to expand the coverage of the state's endangered species law to include any species determined by the Game and Fish Commissioner to be threatened or endangered; Senate Bill No. 2045 to make it a Class C felony for anyone to hunt, take, harvest, collect, distribute, commercialize in, or transport any species of wildlife or plant determined by the Governor to be threatened or endangered; Senate Bill No. 2046 to make it a Class C felony for any person to catch, take, kill, or destroy any fish, fish parts, or fish eggs of any fish species determined by the Game and Fish Commissioner to be of special concern; Senate Bill No. 2047 to enable the Governor to specify by proclamation which guns may be lawfully used in pursuing or taking game birds; Senate Bill No. 2048 to provide that the license fee of any person who applies for a license issued by lottery when by law or proclamation that person is ineligible to apply because of any waiting period is forfeited to the game and Fish Department; Senate Bill No. 2049 to reduce the number of meetings that each member of the Game and Fish Advisory Board must hold in that member's district from two each fiscal year to one each fiscal year; Senate Bill No. 2050 to change the name of the commissioner of the Game and Fish Department to the director of the Game and Fish Department; Senate Bill No. 2051 to enable the Governor to determine by proclamation the time period for which a recipient of an antelope license obtained by lottery is ineligible to again apply for an antelope license; Senate Bill No. 2052 to allow the Game and Fish Commissioner to regulate private shooting preserves by adopting rules relating to operating permits, fees, bond requirements, and the operation of private shooting preserves; and House Resolution No. 3003 to amend Section 11 of Article X of the Constitution of North Dakota to provide that revenue from gasoline and motor fuel excise taxes derived from gasoline and fuel used in vessels and recreational vehicles not licensed for use on public highways must be used for constructing, reconstructing, repairing, and maintaining public facilities relating to vessels and recreational vehicles not licensed for use on public highways.

GARRISON DIVERSION OVERVIEW COMMITTEE

The Council received three briefings on the progress of litigation surrounding the Garrison Diversion Unit Project and project updates from representatives of the Garrison Diversion Conservancy District, State Water Commission, and the United States Bureau of Reclamation.

HIGHER EDUCATION SYSTEM REVIEW COMMITTEE

The Council reviewed the North Dakota Higher Education seven-year plan and constitutional provisions relating to the powers of the Legislative Assembly and the Board of Higher Education. The Council discussed issues relating to higher education and the Board of Higher Education's progress in implementing the provisions of the seven-year plan.

In order to remove constitutional barriers relating to the full implementation of the seven-year plan, the Council recommends House Concurrent Resolution No. 3004 to propose a constitutional amendment to be voted on at the 1992

general election removing the names, locations, and missions of the institutions of higher education from the constitution and also recommends House Concurrent Resolution No. 3005 to propose a constitutional amendment to be voted on at the 1992 general election to remove the provision restricting the transfer of funds between higher education institutions and to replace references to the Commissioner of Higher Education with a chief executive officer position.

INDUSTRY AND BUSINESS COMMITTEE

The Council studied the health care insurance needs of uninsured and underinsured persons. The Council recommends House Bill No. 1042, effective through June 30, 1997, to allow the offering of a basic health insurance coverage plan, free of certain mandated coverages to certain individuals and employers; House Bill No. 1043 to prohibit the introduction of legislation or the consideration of amendments mandating health insurance coverages or various other components of health insurance plans unless the proposal is accompanied by a report prepared by the Commissioner of Insurance which assesses the impact of the proposal and to appropriate \$40,000 to the commissioner for the purpose of implementing the report requirement; Senate Bill No. 2053 to appropriate \$11,339,905, of which \$2,686,563 is the state's responsibility, to the Department of Human Services for the purpose of extending eligibility for medical assistance under Medicaid to certain infants and pregnant women; and Senate Concurrent Resolution No. 4002 to direct a study of the feasibility and ramifications of adopting and implementing a state subsidized health insurance program for certain uninsured and underinsured residents.

The Council studied the feasibility of establishing a controlled substances reporting center for the reporting of prescribed controlled substances. The Council makes no recommendation for legislative action.

JOBS DEVELOPMENT COMMISSION

The Council studied methods and the coordination of efforts to initiate and sustain new economic development in this state. The Council recommends Senate Bill No. 2058 to use the profits of the Bank of North Dakota to provide a comprehensive economic development program; Senate Bill No. 2059 to provide for nationwide interstate banking; Senate Bill No. 2060 to remove the restrictions on the number of facilities that a bank may have for drive-in or walkup services other than at the main bank building; Senate Bill No. 2061 to allow an income tax credit for investment in venture capital corporations and the Myron G. Nelson Fund to be claimed under the optional simplified method of computing the state income tax; Senate Bill No. 2062 to allow tax credits for investments by banks, savings and loan associations, trust companies, and insurance companies in venture capital corporations in the same manner as provided with respect to the Myron G. Nelson Fund; House Bill No. 1048 to remove the sales and use tax for new manufacturing machinery and equipment; House Bill No. 1049 to provide for payment of a license fee in lieu of property taxes on leasehold interests and improvements on state-owned property when used for tourism and concession purposes. The Council also recommends Senate Concurrent Resolution No. 4003 to direct the Legislative Council to study the privatization of some state government services and Senate Concurrent Resolution No. 4004 to direct the Legislative Council to study, analyze, and evaluate, with the assistance of a consultant, public policy as determined by the Legislative Assembly and its relationship to the state's ability to enhance economic development.

The Council also studied the state's bountiful natural resources and outdoor recreation activities with an emphasis on the state's wildlife resources and enhancement of the resources for the benefit of North Dakota citizens and economic development. The Council recommends Senate Bill No. 2054 to establish a State Department of Tourism for the purpose of fostering and promoting tourism and for full development of the state's tourism resources; Senate Bill No. 2055 to provide that all sales tax revenues on lodging accommodations collected under North Dakota Century Code Chapter 57-39.2 would be placed in a tourism promotion fund and to appropriate \$8,900,000 from the fund for the Department of Tourism; House Bill No. 1044 to adopt a state tourism policy that would serve to guide the growth of the state's tourism sector; Senate Bill No. 2056 to establish a matching grant program

for tourism promotion and development in the state; House Bill No. 1045 to revise the definition of a bed and breakfast facility and to place limitations on the county and city government's authority to impose certain requirements on bed and breakfast facilities; House Bill No. 1046 to repeal state law relating to the conduct of business on Sunday and to provide for one day of rest in seven; Senate Bill No. 2057 to increase the permit fee on motor vehicles entering state parks to a maximum of \$20 and to eliminate the free senior citizen entrance permits; and House Bill No. 1047 to require the Department of Transportation to establish rules for the erection and maintenance of tourist-oriented directional signs.

JUDICIARY COMMITTEE

The Council studied the uses to which proceeds of charitable gaming are devoted and the laws and rules governing charitable gaming and the need to establish a permanent legislative overview committee for charitable gaming issues. The Council recommends House Bill No. 1050 to provide a descriptive listing of eligible uses under each broad category of eligible uses defined under present law; Senate Bill No. 2063 to allow charitable gaming organizations to deduct federal gaming excise taxes from the organizations' gross proceeds and to allow the organizations to treat as an additional expense federal excise taxes incurred or paid by the organizations for the period beginning January 1, 1986, and ending on July 1, 1991; House Bill No. 1051 to provide the issuance of charitable gaming licenses to eligible organizations on the basis of what those organizations are allowed to do with charitable gaming net proceeds and to prohibit the forfeiture of an organization's retail alcoholic beverage license if that organization is found to have committed only a charitable gaming violation; House Bill No. 1052 to provide that the manufacturer of both charitable gaming tickets and bingo cards is subject to a single \$2,000 license fee; House Bill No. 1053 to provide that it is within the sole discretion of each charitable gaming licensee whether to require the pooling of tips received by twenty-one dealers; Senate Bill No. 2064 to require the Council to appoint an interim committee that would review rules and laws governing charitable gaming; Senate Bill No. 2065 to establish a State Gaming Commission; and House Bill No. 1054 to require the Department of Human Services to develop a demonstration program for the treatment and rehabilitation of compulsive gamblers, for which \$240,000 is appropriated from charitable gaming tax revenues.

The Council reviewed uniform Acts and proposed amendments to uniform Acts recommended by the North Dakota Commission on Uniform State Laws. The Council recommends adoption of the Uniform Foreign-Money Claims Act; the Uniform Statutory Rule Against Perpetuities; the Uniform Nonprobate Transfers on Death Act (1989); the Uniform Commercial Code Article 3 - Negotiable Instruments; the Uniform Commercial Code Article 4A - Funds Transfers; and amendments to the Uniform Commercial Code Article 1; and recommends the repeal of Uniform Commercial Code Article 6 - Bulk Transfers.

The council makes three recommendations as a result of its statutory revision responsibility. The Council recommends Senate Bill No. 2066 to provide adequate procedural due process protections for the prejudgment attachment by a creditor of a debtor's property; Senate Bill No. 2067 to provide that tax credits available following the dissolution or annexation of school districts are available to those who own property in the dissolved or annexed school district rather than only to those who are residents of the affected district; and Senate Bill No. 2068 to make technical corrections to the North Dakota Century Code.

LEGISLATIVE AUDIT AND FISCAL REVIEW COMMITTEE

The Council accepted 181 audit reports prepared by the State Auditor's office and independent accounting firms.

The Council received reports from the State Auditor's office and Attorney General's office on the Labor Department's procedures for processing claims.

The Council reviewed the auditing procedures regarding the Comprehensive Annual Financial Report (CAFR). The Council recommends Senate Bill No. 2069 to provide for the State Auditor's office to audit the state's Comprehensive Annual Financial Report and the State Auditor to determine the contents of state agency audits and reviews. In addition, the Council recommends Senate

Bill No. 2070 to provide that the State Auditor's audits of political subdivisions be funded within the limits of legislative appropriations from a State Auditor's office operating account.

The Council monitored and studied fine revenues deposited with the state to be used for maintenance of the common schools, accepted the annual reports on accounts receivable written off at the State Hospital, the State Developmental Center, and the human service centers, and received the state of North Dakota outstanding indebtedness reports.

The Council received and reviewed alternatives to provide state departments' authority to spend unanticipated funds, while still complying with the Constitution of North Dakota. The Council recommends that the Emergency Commission receive a special fund appropriation for use by agencies to spend unanticipated collections.

LEGISLATIVE MANAGEMENT COMMITTEE

The Council reviewed legislative rules and makes a number of recommendations intended to clarify the rules and expedite the legislative process. The Council recommends Senate Bill No. 2071 to provide that the President Pro Tempore of the Senate, rather than the President, and the Speaker of the House are to approve vouchers for payment of expenses of the Legislative Assembly during a legislative session; Senate Bill No. 2072 to remove the statutory listing of duties of the Secretary of the Senate and Chief Clerk of the House; House Bill No. 1055 to allow legislative documents to be printed in accordance with directions of the Legislative Council; House Bill No. 1056 to repeal the statutory procedure for engrossing and enrolling legislative bills and resolutions; Senate Bill No. 2073 to replace the Higher Education System Review Committee with the Legislative Council, eliminate certain reports and submissions to the Legislative Council, and provide that staff services for the Special Road Advisory Committee, Capitol Grounds Planning Commission, Regulatory Reform Review Commission, and the North Dakota-Saskatchewan-Manitoba Boundary Advisory Committee be provided by agencies other than the Legislative Council; and Senate Bill No. 2074 to provide that the presiding officers of the respective chambers, upon recommendation of the leaders of the political factions, are to make the appointments to the Legislative Council.

The Council expanded the Legislators' Automated Workstation System for use during the 1991 session as well as approved arrangements for the session. The Council recommends House Bill No. 1057 to authorize the Council to establish specifications for publication of the North Dakota Century Code and to determine access to legislative information services and impose fees for providing these services and copies of legislative documents.

The Council studied the legislative process, with emphasis on the use of the days allowed the Legislative Assembly to be in session. The Council recommends House Concurrent Resolution No. 3006 that directs the Council to study and establish procedures necessary to implement annual sessions of the Legislative Assembly beginning in 1993 and 1994.

The Council studied legislative session employee compensation and reviewed the workload of committee clerks. The Council recommends that three-day committee clerks receive the same daily compensation as the assistant Appropriations Committee clerks.

The Council reviewed the state of the law with respect to legislative apportionment requirements. The Council completed its participation in the 1990 census redistricting data program.

The Council reviewed the constitutional requirements that amendments to bills be germane to the subject matter of the bills.

The Council supervised the continuing renovation of the legislative wing of the State Capitol.

POLITICAL SUBDIVISIONS COMMITTEE

The Council studied administration of building and mechanical code enforcement at the state and local level to identify inadequacies, determine the appropriate placement of building code responsibilities, and recommend administrative improvement. The Council recommends Senate Bill No. 2075 to require the director of the Office of Management and Budget to employ a state building official who is certified by the International Conference of

Building Officials, to provide that the State Building Code consists of the 1988 Uniform Building Code, and to allow cities, townships, and counties to amend the State Building Code to conform to local needs, except that the standards established may not exceed those of the State Building Code and Senate Bill No. 2076 to provide that the State Building Code consists of the 1988 Uniform Building Code and to allow cities, townships, and counties to amend the State Building Code to conform to local needs.

The Council studied the problems associated with solid waste management, including integrated waste management; use and availability of landfills; recycling methods and projects; incineration of solid waste; involvement of government in solid waste management; feasibility of pilot projects designed to promote the recycling of solid waste; and laws and rules concerning the use of underground storage tanks.

The Council recommends House Bill No. 1058 to require each county and city to participate in a comprehensive solid waste management plan and to allow the governing body of each city, county, and township to join in a regional solid waste management agency or program; House Bill No. 1059 to require the Department of Health and Consolidated Laboratories to develop and disseminate to the public educational material designed to encourage voluntary solid waste reduction, source separation, reuse of materials, recycling efforts, and appropriate management of solid waste; House Bill No. 1060 to require owners and operators of municipal landfills to be certified, require the owner or operator of a solid waste management facility accepting more than an average of 300 tons of solid waste per day to submit annual detailed assessments of the facility, and to increase the penalty for violation of the Solid Waste Management and Land Protection Act from \$300 per day to \$1,000 per day; House Bill No. 1061 to establish a solid waste management fund for the primary purpose of providing assistance to businesses for the development of markets for recycled products; House Bill No. 1062 to provide for the establishment of solid waste management authorities by the governing bodies of two or more cities, counties, or townships; and House Bill No. 1063 to establish a new prohibition on littering and open burning.

The Council studied the economic and social impact on political subdivisions, the agricultural community, and the business community when the state or federal government acquires land and the land is removed from the political subdivisions' tax bases. The Council makes no recommendation for legislative action.

The Council studied the methods by which the state acquires and holds title to real property, the feasibility of simplifying or clarifying laws regarding acquisition and ownership of real property by the state, the effect on local tax bases of ownership of real property by the state, and the feasibility or desirability of requiring divestiture by the state of certain real property. The Council recommends Senate Bill No. 2077 to require the Board of University and School Lands to make payments to political subdivisions in lieu of property taxes for real property owned by the board.

REGULATORY REFORM REVIEW COMMISSION

The Regulatory Reform Review Commission reviewed the operation and effect of the Telecommunications Regulatory Reform Act. The commission also reviewed the implementation of the 1990 essential telecommunications price factor, the use of rate of return to monitor rates set using the essential telecommunications price factor, and incentive telecommunications plans in other states.

RETIREMENT COMMITTEE

The Council solicited and reviewed various proposals affecting public employee retirement programs. The Council obtained actuarial and fiscal information on each of these proposals and reported this information to each proponent.

The Council studied various options relating to the consolidation of various organizational and investment functions of the Public Employees Retirement System, Teachers' Fund for Retirement, and State Investment Board. The Council recommends Senate Bill No. 2078 to make the establishment of the North Dakota State Retirement and Investment Office permanent by repealing the sunset provisions placed on 1989 Senate Bill No. 2030 and to make the

repeal retroactive to June 29, 1991. The Council recommends Senate Resolution No. 4005 to direct the Legislative Council to study the consolidation of the Retirement and Investment Office, Public Employees Retirement System, and Teachers' Fund for Retirement.

The Council studied the issues and the feasibility of various options relating to the provision of adequate and affordable health insurance coverage for retired members of the Teachers' Fund for Retirement and the judges' retirement program, and for other retired state employees and officials not participating in the Public Employees Retirement System or the Highway Patrolmen's Retirement System.

The Council studied providing level retirement benefits to all retirees under the Teachers' Fund for Retirement.

TAXATION COMMITTEE

The Council studied the structure, balance, and burden of North Dakota's state and local tax system. The Council found that North Dakota's tax system burden compared favorably to tax burdens of other states. The Council makes no recommendation for changes in North Dakota's tax structure.

The Council studied agricultural property assessment for property tax purposes. The Council found that differences in valuation of similar properties in different assessment districts are inherent in the present formula for agricultural valuation. It appears that changes to the valuation formula for agricultural property will be required, but information needed to restructure the formula will not be available until the 1995 legislative session.

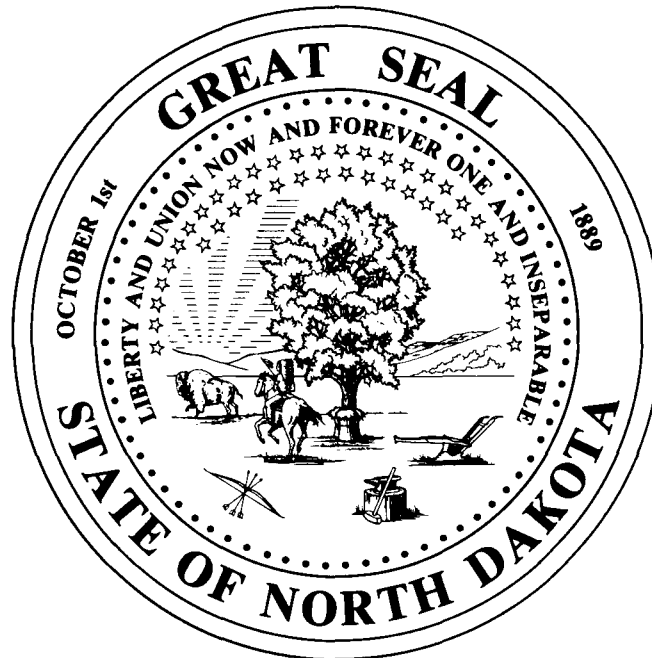
The Council studied assessment of seasonal or recreational property and tax-exempt property. The committee makes no recommendation for changes in assessment of these types of property.

REPORT

of the

NORTH DAKOTA LEGISLATIVE COUNCIL

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



FIFTY-SECOND LEGISLATIVE ASSEMBLY

1991

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North Dakota Legislative Council

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January 7, 1991

Honorable George A. Sinner
Governor of North Dakota

Members, 52nd Legislative
Assembly of North Dakota

I have the honor to transmit the Legislative Council's report and recommendations of 20 interim committees, the Advisory Commission on Intergovernmental Relations, and the Regulatory Reform Review Commission to the 52nd Legislative Assembly.

Major recommendations include proposals to establish a pilot project for agricultural pesticide containers; establish a legislative policy on human organ transplantation; encourage the establishment of multicounty social service districts; establish a new procedure for restructuring school districts and to help cooperative school district arrangements; provide for mail ballots for primary and political subdivision special elections; provide for implied consent for hunters and operators of motorboats; establish a state department of tourism; provide for Sunday opening of retail establishments; provide a comprehensive economic development program using the profits of the Bank of North Dakota; provide for a demonstration program for compulsive gamblers; and require cities and counties to participate in a comprehensive solid waste management plan.

The report also discusses committee findings and numerous other pieces of recommended legislation. In addition, the report contains brief summaries of each committee report and of each recommended bill and resolution.

Respectfully submitted,

A handwritten signature in cursive script that reads "Charles F. Mertens".

Representative Charles F. Mertens
Chairman, North Dakota
Legislative Council

CFM/PG

HISTORY AND FUNCTIONS OF THE NORTH DAKOTA LEGISLATIVE COUNCIL

I. HISTORY OF THE LEGISLATIVE COUNCIL

The North Dakota Legislative Council was created in 1945 as the Legislative Research Committee (LRC). The LRC had a slow beginning during the first interim of its existence because, as reported in the first biennial report, the prevailing war conditions prevented the employment of a research director until April 1946.

After the hiring of a research director, the first LRC held monthly meetings prior to the 1947 Legislative Session and recommended a number of bills to that session. Even though the legislation creating the LRC permitted the appointment of subcommittees, all of the interim work was performed by the 11 statutory members until the 1953-54 interim, when other legislators participated in studies. Although "research" was its middle name, in its early years the LRC served primarily as a screening agency for proposed legislation submitted by state departments and organizations. This screening role is evidenced by the fact that as early as 1949, the LRC presented 100 proposals prepared or sponsored by the committee, which the biennial report indicated were not all necessarily endorsed by the committee and included were several alternative or conflicting proposals.

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

II. THE NEED FOR A LEGISLATIVE SERVICE AGENCY

The Legislative Council movement began in Kansas in 1933. At present, nearly all states have such a council or its equivalent, although a few states use varying numbers of special committees.

Legislative service agencies provide legislators with the tools and resources that are essential if they are to fulfill the demands placed upon them. In contrast to other branches of government, the Legislative Assembly in the past had to approach its deliberations without its own information sources, studies, or investigations. Some of the information relied upon was inadequate or slanted because of special interests of the sources.

To meet these demands, the Legislative Assembly established the North Dakota Legislative Council. The existence of the Council has made it possible for the Legislative Assembly to meet the demands of the last half of the 20th century while remaining a part-time citizen legislature which meets for a limited number of days every other year.

III. COMPOSITION OF THE COUNCIL

The Legislative Council by statute consists of 15 legislators, including the majority and minority leaders of both houses and the Speaker of the House.

The speaker appoints five other representatives, two from the majority and three from the minority from a list of nine members recommended by each party. The Lieutenant Governor, as President of the Senate, appoints three senators from the majority and two from the minority from a list of seven members recommended by each party.

The Legislative Council is thus composed of eight majority party members and seven minority party members (depending upon which political party has a majority in the Senate), and is served by a staff of attorneys, accountants, researchers, and auxiliary personnel who are hired and who serve on a strictly nonpartisan basis.

IV. FUNCTIONS AND METHODS OF OPERATION OF THE COUNCIL

Although the Legislative Council has the authority to initiate studies or other action deemed necessary between legislative sessions, much of the Council's work results from study resolutions passed by both houses. The usual procedure is for the Council to designate committees to carry out the studies, although a few Council committees, including the Budget Section, the Administrative Rules Committee, the Retirement Committee, the Garrison Diversion Overview Committee, and the Legislative Audit and Fiscal Review Committee, are statutory committees with duties imposed by state law.

Regardless of the source of authority of interim committees, the Council appoints the members with the exception of a few ex officio members named by statute. Nearly all committees consist entirely of legislators, although a few citizen members are sometimes selected to serve when it is determined they can provide special expertise or insight for a study.

The Council committees hold meetings throughout the interim at which members hear testimony, review information and materials provided by staff, other state agencies, and interested persons and organizations, and consider alternatives. Occasionally it is necessary for the Council to contract with universities, consulting firms, or outside professionals on specialized studies and projects. However, the vast majority of studies are handled entirely by the Council staff.

Committees make their reports to the full Legislative Council, usually in November preceding a regular legislative session. The Council may accept, amend, or reject a committee's report. The Legislative Council then presents the recommendations it has accepted, together with bills and resolutions necessary to implement them, to the Legislative Assembly.

In addition to conducting studies, the Council and its staff provide a wide range of services to legislators, other state agencies, and the public. Attorneys on the staff provide legal advice and counsel on legislative matters to legislators and legislative committees. The Council supervises the publication of the Session

Laws, the North Dakota Century Code, and the North Dakota Administrative Code. The Council has on its staff the Legislative Budget Analyst and Auditor and assistants who provide technical assistance to Council committees and legislators and who review audit reports for the Legislative Audit and Fiscal Review Committee. A data processing division provides computer services to the legislative branch, including research and bill drafting capabilities. The Legislative Council library contains a wide variety of materials and reference documents, many of which are not available from other sources.

V. MAJOR PAST PROJECTS OF THE COUNCIL

Nearly every facet of state government and statutes has been touched by one or more Council studies since 1945. Statutory revisions, including the rewriting of criminal laws, election laws, game and fish laws, insurance laws, motor vehicle laws, school laws, and weapons laws have been among the major accomplishments of interim committees. Another project was the republication of the North Dakota Revised Code of 1943, the resulting product being the North Dakota Century Code.

Government reorganization has also occupied a considerable amount of attention. Included have been studies of the delivery of human services, agriculturally related functions of state government, centralized state government computer and microfilm services, and organization of the state's charitable and penal institutions, as well as studies of the feasibility of consolidating functions in state government. Creation of a court of appeals and the establishment of a public venture capital corporation were subjects of recent studies.

The review of uniform and model acts, such as the Uniform Probate Code, have also been included in past Council agendas. Constitutional revision has been studied several interims, as well as studies to implement constitutional measures which have been approved by the voters, such as the new Legislative Article.

Pioneering in new and untried areas is one major function of interim committees. The regulation and taxation of natural resources, including oil and gas in the 1950s and coal in the 1970s, have been the highlights of several interim studies. The closing of the constitutional institution of higher education at Ellendale also fell upon an interim committee after a fire destroyed one of the major buildings on that campus. The expansion of the University of North Dakota Medical School is another area that has been the subject of several interim studies.

Among the innovations of interim committees was the creation of the Regional Environmental Assessment Program (REAP) in 1975. This was a resource and information program designed to provide environmental, socioeconomic, and sociological data acquisition and monitoring. REAP was terminated with a gubernatorial veto in 1979, after four years as a joint legislative-executive program under the tutelage of the Legislative Council.

Perhaps of most value to citizen legislators are committees which permit members to keep up with rapidly changing developments in complex fields. Among these are the Budget Section, which receives the executive budget prior to each legislative session. The Administrative Rules Committee allows legislators to monitor executive branch department rules and regulations. Other subjects which have been regularly studied include school finance, property tax levies, and legislative rules.

ADMINISTRATIVE RULES COMMITTEE

The Administrative Rules Committee is a statutory committee deriving its authority from North Dakota Century Code (NDCC) Sections 54-35-02.5, 54-35-02.6, and 28-32-03.3. The committee is statutorily required to review administrative agency rules to determine:

1. Whether administrative agencies are properly implementing legislative purpose and intent.
2. Whether there are court or agency expressions of dissatisfaction with state statutes or with rules of administrative agencies promulgated pursuant thereto.
3. Whether court opinions or rules indicate unclear or ambiguous statutes.

The committee may make rule change recommendations to the adopting agency, formally object to an agency rule, and make recommendations to the Legislative Council for the amendment or repeal of enabling legislation serving as authority for the rules.

In addition, the Legislative Council delegated to the committee the Council's authority to review and approve or disapprove state purchasing rules pursuant to NDCC Section 54-44.4-04, to approve extensions of time allowed administrative agencies to adopt rules pursuant to NDCC Section 28-32-02, and to establish a procedure to distribute copies of administrative agency filings of notice of proposed rulemaking.

Committee members were Representatives Kenneth N. Thompson (Chairman), John Dorso, June Y. Enget, Orlin M. Hanson, John Hokana, and Theodore A. Lang and Senators E. Gene Hilken, Joe Keller, Byron Langley, Curtis N. Peterson, and Jens Tennesfos.

The report of the committee was submitted to the Legislative Council at the biennial meeting of the Council in November 1990. The report was adopted for submission to the 52nd Legislative Assembly.

ADMINISTRATIVE AGENCY RULES REVIEW

The committee is statutorily required to review administrative agency rules. Administrative agencies are those state agencies authorized to adopt rules in accordance with the requirements of the Administrative Agencies Practice Act (NDCC Chapter 28-32). By statute a rule is an agency statement that implements, interprets, or prescribes law or policy. Properly adopted rules have the force and effect of law. A copy of each rule adopted by an administrative agency must be filed with the office of the Legislative Council for inclusion in a publication known as the North Dakota Administrative Code (NDAC).

The committee's review authority is statutorily limited to rules assigned to the committee by the Legislative Council chairman. At the committee's request, the Legislative Council chairman assigned to the committee all rules published in the NDAC effective after October 1988. This allowed continuation of the rules review process initiated on July 1, 1979.

As rules were scheduled for review, each adopting agency was requested to provide information on:

1. Whether the rules resulted from statutory changes made by the 1979, 1981, 1983, 1985, 1987, or 1989 Legislative Assembly.
2. Whether the rules resulted from federal statutes or whether the rules were related in subject matter to any federal statute or regulation.
3. The rulemaking procedure followed in adopting the rules.
4. Whether any person had filed any complaint concerning the rules.
5. The approximate cost of giving public notice and holding any hearing on the rule, and the approximate cost of staff time used in developing the rules.
6. The subject matter of the rules and the reasons for adopting the rules.

Review of Current Rulemaking

The committee reviewed 2,325 rule changes from October 1988 through October 1990. Table A tabulates the rule changes published in the Administrative Code and reviewed by the committee. The tabulation depicts the number of rules amended, created, superseded, repealed, or redesignated. The most important qualification of the tabulation is that each rule is viewed as one unit, although rules differ in length and complexity. This tabulation includes tables, appendices, and some organizational rules.

Although the agencies' methods of reporting made it difficult to determine the exact number of rules resulting from a particular Legislative Assembly's action or from federal statute or regulation, most of the changes made as a result of legislative action were due to 1989 Legislative Assembly changes or federal statutes. Some of the changes made as a result of previous Legislative Assemblies' actions were only recently made because the need for the rules was not perceived earlier. It also appeared that some agencies were only now becoming aware that interpretations made by the agencies that are to have the force and effect of law must be formally adopted as rules.

North Dakota Century Code Section 28-32-02 requires that any rule change made to implement a statutory change must be adopted within nine months of the effective date of the statutory change. Pursuant to the committee's authority to grant extensions of that time period, the committee granted extensions to the Board of Cosmetology, Department of Corrections and Rehabilitation, Commissioner of Insurance, Securities Commissioner, Department of Human Services, North Dakota Geological Survey, Seed Department, North Dakota Retirement and Investment Office, Committee on Protection and Advocacy, Public Service Commission, Public Employees Retirement System, Milk Stabilization Board, Attorney General, Board of Counselor Examiners, Department of Health and Consolidated Laboratories, Secretary of State, State Historical

Society, and the Central Personnel Division for periods ranging from four months to one year. Five extensions were requested and granted by the committee last interim.

Department of Health and Consolidated Laboratories - Laboratory Fee Amounts

The Department of Health and Consolidated Laboratories amended NDAC Section 33-23-01-02 to remove the specific laboratory fee costs and to provide that changes in the fees are based on reagent costs, testing time, personnel salaries, and overhead costs. The department informed the committee that the costs for the tests fluctuate at a rate that makes it difficult to make the necessary changes within the rulemaking process. Committee members were concerned that the fee amounts, especially for the tests mandated by law, are not determined pursuant to the rule adoption procedures. The committee sent a letter to the Department of Health and Consolidated Laboratories objecting to the amendment to delete the fee amounts and asking for a cost analysis of the fees. After receiving the letter, the department indicated it did not plan further action on the rules. This decision was based on:

1. The fact that the rule change was accomplished after going through all the steps of public notice, public hearing, and review by the State Health Council, which is made up of 15 members representing both providers and consumers. During the process no objection was raised to the rule change.
2. The rule change was considered administratively necessary because of the problems encountered in maintaining the operation of the consolidated laboratories branch.
3. The rule change was consistent with NDCC Section 28-32-01(6) which states that the term "rule" does not include a rule establishing specific prices to be charged for particular goods or services sold by an agency. The department explained that it publishes a listing of the charges and the consumers know the cost of the laboratory tests before they are billed for the services.

The department made a further presentation to the committee concerning the costs of the laboratory tests. Based on this information, the committee decided not to take any further action on these rules.

Tax Commissioner - Oil and Gas Valuation Rules - Administrative Hearing Procedures

The committee received a complaint from the North Dakota Petroleum Council concerning rules proposed by the Tax Commissioner relating to oil and gas valuation. The council objected not only to the proposed rules but to the fact that the Tax Commissioner refused to hold any administrative hearings in oil and gas tax assessment cases. The council asked that the commissioner issue rules to assure the reasonably prompt setting and orderly and fair conduct of administrative hearings. The Tax Commissioner's office suggested that the complaints about the proposed valuation rules are the result of the two parties' different interpretation of the law

and court cases relating to that law. The Tax Commissioner's office explained the delays in holding hearings occurred for a number of different reasons including a shortage of staff, the complicated nature of the cases, and sometimes due to the oil companies' own actions.

Committee members did not express an opinion on the substance of the valuation rules but did express concern over the lack of rules relating to the conduct of administrative hearings. The Tax Commissioner subsequently agreed to adopt rules relating to administrative procedures. The commissioner reported that a taxpayer's bill of rights was distributed to a committee composed of three certified public accountants and three representatives from the oil and gas industry for recommendations on appropriate rules. The commissioner indicated proposed rules relating to administrative hearing procedures would be ready for hearing by November 1990. The committee decided not to take further action based on the commissioner's assurance that the appropriate rules would be adopted.

Department of Human Services - Child Support Guidelines

Committee members received many letters and calls objecting to the Department of Human Services' proposed rules relating to child support guidelines. The department held a hearing on the rules on February 9, 1990. The comments received at the hearing and written comments received prior to, and during, the hearing generally opposed the proposed rules.

After review of the comments, the department withdrew the originally proposed rules and in September proposed new rules relating to child support and scheduled hearings for early November 1990. Based on the department's action relating to the newly proposed rules, the committee decided to take no further action relating to this topic.

Department of Human Services - Nursing Home Ratesetting Rules

The committee received a complaint from the Long-Term Care Association concerning the Department of Human Services' rules relating to nursing home ratesetting. The association was particularly concerned with the removal of the rule providing for an operating margin and the reduction in the incentive of \$2.60 a day. Testimony indicated that nursing homes may soon be in serious trouble because of the law requiring rate equalization. The committee requested that the department and the association work together to address the concerns of the association. At the committee's final meeting, a representative of the department explained the department was in favor of providing, and had planned to include, the money for the requested items in its proposed budget but had been informed by personnel in the Governor's office and the Office of Management and Budget that that money would not be available. Committee members expressed concern over the care in nursing homes if money is not provided soon and discussed whether legislative action may be necessary to alleviate this problem.

Commissioner of Insurance - Risk Retention Group Rules

House Bill No. 1350 (1987), codified as NDCC Chapter 26.1-46, granted the Commissioner of Insurance the authority to regulate risk retention and purchasing groups. The committee was concerned that some of the rules adopted by the commissioner and NDAC Chapter 45-05-05 went beyond the authority granted the commissioner by the law. The law exempts risk retention groups of 25 or fewer resident members from requirements relating to plans of operation and feasibility studies, taxation, and licensing of agents. North Dakota Administrative Code Section 45-05-05-02 contains the exemption as it relates to the filing of financial statements, reports, and examinations. Other sections of the chapter, such as those relating to agent licensing and taxation, NDAC Sections 45-05-06 and 45-05-09, do not contain those exemptions, making it appear that all groups regardless of size are subject to the requirements of the sections.

A representative of the Commissioner of Insurance explained that the statutes relating to the filing of financial statements, reports, and examinations did not refer to the exemption of 25 or fewer members and, therefore, that exemption was included in the administrative rules. The commissioner did not include the requirement in the sections relating to agency licensing and taxation because the exemption is contained in the statute. The representative assured the committee that the commissioner was exempting those groups in all circumstances.

The committee decided to take no further action relating to this matter but did suggest to the representative of the commissioner that the references should be uniform and should be changed the next time the rules are otherwise amended.

ADMINISTRATIVE AGENCIES PRACTICE ACT

The committee reviewed the procedure and determined the filings should be mailed out monthly on or about the first of each month and that the charge for providing the filing be \$50 annually. As of October 1990 there were 10 subscribers to this service.

The committee discovered that a problem exists when the filings are sent out the first of each month and a filing is received by the Legislative Council shortly after that time period. The statute requires that only 30 days need elapse after the filing during which views could be submitted which may result in the subscribers receiving a notice after the period for submitting views. The committee considered a bill draft to provide that 30 days must elapse between the date the Legislative Council mails copies of the agencies' proposed rulemaking notices and the end of the period in which written or oral data views or arguments concerning the rules will be received. The bill draft also provides the Legislative Council must establish a procedure by which any person may request and be mailed copies before the fifth business day of the month of all filings made the previous month by agencies.

North Dakota Century Code Section 28-32-01

North Dakota Century Code Section 28-32-01 contains the definition of "rule" as it applies to the requirements of NDCC Chapter 28-32, the Administrative Agencies Practice Act. During the 1987-88 interim the Administrative Rules Committee was directed to study Chapter 28-32. From that study the committee recommended two bills—House Bill No. 1031, an extensive bill providing for an administrative bulletin publication and major changes to Chapter 28-32, and House Bill No. 1032, which required publication of the bulletin and expanded rulemaking processes. During the 1989 legislative session, House Bill No. 1031 was defeated and House Bill No. 1032 was changed in its entirety. Amendments to House Bill No. 1032 were explained as a compromise among several state agencies and the Greater North Dakota Association. The bill, as passed, added four new sections to the definition of "rule," specifically exempting:

1. Interpretative statements, general statements of policy, or statements of agency organization, procedure, or practice.
2. Guidelines, manuals, brochures, pamphlets, and similar statements of policy intended to advise or guide the agency or the public concerning activities of the agency which are otherwise prescribed by rule or statute.
3. Statements of policy intended to implement federal statutes, rules, or requirements with which compliance by the agency is necessary to secure appropriated revenues, or to avoid the loss of otherwise available federal revenues.
4. A contract.

Committee members expressed concern about the exemptions, which conflict with other language in the definition of "rule" and in Section 28-32-02.1. Also, the new exemptions could be used to circumvent the rules process by calling materials interpretative statements, general statements of policy, or guidelines. The committee approved a motion that stated it was not the intent of the committee that the exemptions be used in that manner.

The committee considered a bill draft to remove the four exemptions from the definition of "rule." A number of state agencies opposed the bill draft, saying agencies need some procedure whereby an agency can interpret on a short-term basis its rules and statutes. As a result of that testimony, the committee determined that an exemption should be allowed for any material, including a guideline, interpretative statement, statement of general policy, manual, brochure, or pamphlet, that is merely explanatory and not intended to have legal effect. A representative from the Public Service Commission requested that the exemption be granted for material not intended to have the force and effect of law rather than legal effect. A representative of the Department of Human Services objected to the bill draft in its entirety and specifically requested that the exemption allowing statements of policy intended to implement federal statutes or rules be retained.

North Dakota Century Code Section 28-32-02

During the 1987-88 interim the Administrative Rules Committee recommended House Bill No. 1032, which would have amended NDCC Section 28-32-02 to require the monthly publication of an administrative bulletin. That bulletin would have contained notices of all proposed administrative agency rulemaking. The provisions recommended by the committee were replaced with language recommended by the Department of Human Services, Public Service Commission, and the Greater North Dakota Association. Section 28-32-02 now requires that an agency's notice of proposed rulemaking must be filed with the office of the Legislative Council and published at least twice in each daily newspaper of general circulation published in this state. The section requires that at least 30 days must elapse between the latter of the date of the first publication of the notice or the date of the filing with the office of the Legislative Council and the end of the period in which written or oral data, views, or arguments concerning the proposed rule will be received. The Legislative Council is required to establish a procedure whereby any person may request and receive mailed

copies of all filings made by agencies. The Legislative Council may charge for the actual costs of providing copies of the filing. The Legislative Council assigned the responsibility for establishing this procedure to the Administrative Rules Committee.

Recommendations

The committee recommends House Bill No. 1024 to amend the definition of "rule" to replace the existing exemptions for interpretative statements, general statements of policy, and guidelines with an exemption for any material, including a guideline, interpretative statement, statement of general policy, manual, brochure, or pamphlet, that is merely explanatory and not intended to have the force and effect of law.

The committee recommends House Bill No. 1025 to provide that 30 days must elapse between the date the Legislative Council mails copies of an agency's proposed rulemaking notice and the end of the period in which written or oral data, views, or arguments concerning the rules will be received.

TABLE A

STATISTICAL SUMMARY OF RULEMAKING						
Agency	Amend	Create	Supersede	Repeal	Special	Reserved
Aeronautics Commission	2	5	71*			
Agricultural Products Utilization Commission		5				
Agriculture, Commissioner of	12	18		2		
Animal Health, Board of	23	3				
Architecture, Board of	1					
Attorney General	203	71		7		
Audiology and Speech-Language Pathology, Board of Examiners of	8	2				
Banking and Financial Institutions, Department of	1	2				
Centennial Commission		2				
Chiropractic Examiners	13	1		8		
Correction and Rehabilitation, Department of		108				
Cosmetology, Board of	20	4				
Credit Review Board	22	6				
Dairy Promotion Commission	2					
Dental Examiners, Board of	1					
Electrical Board	18					
Emergency Commission	1					
Funeral Services, State Board of	1					
Game and Fish Department	4	1		2		
Health and Consolidated Laboratories, Department of	241	130		3	2**	50****
Highway Department		5				
Highway Patrol		32				
Historical Board		7				
Human Services, Department of	27	88		20	18**	
Industrial Commission	25	26				

STATISTICAL SUMMARY OF RULEMAKING (continued)						
Agency	Amend	Create	Supersede	Repeal	Special	Reserved
Insurance, Commissioner of	18	47				
Job Service North Dakota	2	1				
Management and Budget, Office of	1					
Medical Examiners, Office of	5	1		4		
Milk Stabilization Board	3			1	5***	
Motor Vehicle Department		1		1		
Nursing, Board of	26	11		1		
Oilseed Council	7					
Optometry, Board of	7	1		3		
Parole Board	1					
Pesticide Control Board	7					
Pharmacy, Board of	4	2				
Plumbing, Board of	56	3		4		
Private Investigative and, Security Board		40				
Public Instruction, Superintendent of	1	17				
Public Service Commission	200	3		3		
Racing Commission, North Dakota		165				
Real Estate Commission		3				
Retirement Board	78	12		2		
Securities Commissioner	4	5				
Seed Commission	18	1		5		
Soil Classifiers, Board of Registration for Professional	2					
Soil Conservation Committee	1					
Tax Commissioner	35	28		1		3****
Teachers' Fund for Retirement, Board of Trustees of the	1	30				
Treasurer, State	2					
Water Commission	32	66		1		
Workers Compensation Bureau	6	12				
Total	1,142	965		71	69	25
						53

Grand Total All Sections = 2,325

- * Redesignated sections
- ** Changed Law Implemented and General Authority source notes
- *** Corrections
- **** Numbers reserved for future use

ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS

The Advisory Commission on Intergovernmental Relations was established by passage of 1989 Senate Bill No. 2067. The commission is directed by statute to study issues of common concern to the state and its political subdivisions and to report its findings and recommendations to the Legislative Council in the same manner as interim Legislative Council committees. Two requests for study were referred by the chairman of the Legislative Council to the commission—control by county officials of salaries of county social service employees and establishment of regional law enforcement authorities. The commission undertook study of several other issues.

Membership of the Advisory Commission on Intergovernmental Relations is established by statute to include four members of the Legislative Assembly appointed by the Legislative Council, two citizen members appointed by the North Dakota League of Cities, two citizen members appointed by the North Dakota Association of Counties, one citizen member appointed by the North Dakota Township Officers Association, one citizen member appointed by the North Dakota Recreation and Park Association, and the Governor or the Governor's designee. The chairman of the commission is designated by the Legislative Council. All members of the commission serve a term of two years beginning July 1 of each odd-numbered year. From July 1, 1989, through June 30, 1991, the commission members are Representatives W. C. Skjerven (Chairman) and Bill Sorensen; Senators Russell T. Thane and James C. Yockim; League of Cities representatives Jeff Fuchs and David Shelver; Association of Counties representatives Ernest Fadness and Susan Ritter; Township Officers Association representative Ken Yantes; Recreation and Park Association representative Randy Bina; and Governor George A. Sinner.

The report of the commission was submitted to the Legislative Council at the biennial meeting of the Council in November 1990. The report was adopted for submission to the 52nd Legislative Assembly.

COUNTY SOCIAL SERVICE EMPLOYEES

The Elmer Jesme Conference of Counties sent a resolution to the chairman of the Legislative Council requesting study of state laws in an effort to revise state personnel policies to allow local governing boards greater input into and control of salaries and benefits for county social service employees. The chairman of the Legislative Council referred this resolution to the commission for consideration. The commission found that this resolution addressed issues of longstanding concern to county officials.

As a condition to receive federal financial participation in social service programs for which the federal government provides funds, federal law and regulations require that the agency administering the program must operate under a merit system of personnel administration. This is true of all federal

programs including food stamps, old-age assistance, unemployment insurance and employment services, aid to families with dependent children, aid to the blind, aid to the permanently and totally disabled, medical assistance or Medicaid, state and community programs on aging, adoption assistance and foster care, occupational safety and health standards, child welfare services, emergency management assistance, and other programs. Federal law also contains standards that must be met by merit systems to qualify for federal financial assistance, relating to equitable and adequate compensation and other requirements.

North Dakota Century Code (NDCC) Section 54-42-06 provides that political subdivisions required by federal law to be subject to a merit system in order to obtain federal grants-in-aid are covered by the complete merit system, which is administered by the State Personnel Board and the Central Personnel Division. It appears that legislative action would be required to allow counties to opt out of the use of the state merit system, to allow them to establish their own merit systems. The cost of use of the state merit system, currently estimated at \$6 to \$7 per month per county social service employee, is paid by the State Department of Human Services and counties are charged nothing for use of the state system. It appears that the cost to a county of establishing its own merit system would be substantial. Participation in the various federally funded social service programs is voluntary and a county could elect not to use a merit system of personnel administration but would then be unable to obtain federal funds for the programs.

Use of the state merit system by counties entails use of the state personnel system compensation plan. When the Legislative Assembly provides salary increases to state employees, the state merit system compensation plan must be adjusted accordingly under NDCC Section 54-44.3-12.1. One of the problems faced by boards of county commissioners is that salary increases are mandated for county social service employees when state merit system compensation plan changes occur and nonmerit system employees do not receive increases at such times. When salary increases are granted to nonmerit system county employees, questions of pay equity among county employees resurface over whether merit system personnel should also receive increases. Another factor that has created controversy is the fact that Central Personnel Division revisions to compensation plans are effective July 1 following the close of a regular legislative session while county budgets take effect on a calendar year basis. The fact that compensation plan changes may mandate unanticipated salary increases in the middle of a budget year could be disruptive to county finances. Although not provided by statute or contained in the North Dakota Administrative Code, the Central Personnel Division grants waivers to counties, which allow the counties to delay salary increases until January 1 following the July 1 date of changes. These waivers are not

blanket waivers for all counties but are granted on a case-by-case basis to counties that apply for waivers.

The commission considered several options to allow counties greater control of compensation of county social service employees. Because federal law is dominant in this area, it appears that there is no opportunity for state law to relieve counties of the obligation of merit system personnel administration. In addition, the substantial cost of establishing a separate merit system by a county, when weighed against use of the state merit system at no cost to the county, makes it unlikely that counties would opt out of using the state system even if they were allowed to do so by state law. The commission found one area where state law could be changed to assist counties and received favorable testimony from several county officials in support of a bill draft that would mandate that changes to the state merit system classification and compensation plans that become effective on July 1 after a legislative session would not become effective until the following January 1 for county employees.

Recommendation

The commission recommends House Bill No. 1026 to amend NDCC Section 54-44.3-12.1 to provide that State Merit System classification and compensation plan changes that become effective on July 1 after the close of a legislative session would be left intact for state employees but would be delayed in effect for county social service employees until the first full budget year of the county, beginning on the following January 1. This bill is intended to accomplish more equity among county employees by providing that salary increases for county social service employees would be on a county budget year basis and would allow the county budget process to function with knowledge of pending increases mandated by state law for county social service employees. In addition, some counties presently obtain a waiver to delay mandated salary increases for county social service employees until January 1. This bill would eliminate the need for waivers by delaying mandated salary increases for all county employees covered by the state merit system until January 1.

SOLID WASTE MANAGEMENT RULES

The commission sought information on the interim Political Subdivisions Committee's study of solid waste management issues. As part of the information received in response to this request for information, the commission reviewed the status of rules governing municipal landfills which are being considered by the United States Environmental Protection Agency and rules being considered by the Division of Waste Management of the State Department of Health and Consolidated Laboratories. It appears that the proposed Environmental Protection Agency rules will not become effective for a year or more, and it is not possible to anticipate the ultimate contents of the rules.

The commission received testimony from representatives of the North Dakota Association of Counties and the North Dakota League of Cities expressing concern with the proposed state rules. The concern that was expressed is that if local govern-

ments revise waste management practices and landfills to comply with state rules and are then forced to make further changes to comply with federal rules, the costs of compliance could be overwhelming to local budgets. The commission was urged to request the State Department of Health and Consolidated Laboratories to refrain from adopting any rules more restrictive than federal rules and to exercise care not to enact rules that would conflict with pending federal rules. The commission made this recommendation to the State Department of Health and Consolidated Laboratories, which responded by agreeing to delay implementation of the pending state rules until more knowledge is gained of the pending federal rules. The State Department of Health and Consolidated Laboratories has also involved the League of Cities and Association of Counties in a task force to consider the pending state rules.

Conclusion

The commission makes no recommendation for legislation dealing with solid waste management. The commission's goal of assuring consideration of concerns of city and county officials over state waste management rules was accomplished informally by agreement of the State Department of Health and Consolidated Laboratories.

REGIONAL LAW ENFORCEMENT AUTHORITIES

The Lake Region Law Enforcement Board presented a resolution to the chairman of the Legislative Council, who referred the resolution for consideration by the commission. The resolution calls for the establishment of regional law enforcement authorities and suggests that each county should be required to become a member of a regional law enforcement authority. The expressed goal of the resolution is to require each participating county to levy taxes for support of the regional facility.

The Lake Region Law Enforcement facility was established by mutual agreement of seven counties. Three of the original seven counties have since dropped out of the agreement and the loss of their financial participation has been detrimental to the facility's budget. A representative of the Lake Region Law Enforcement Board told the commission that it is difficult to make ends meet in operating a Class I jail facility. Although nonparticipating counties are charged a higher per diem rate for holding prisoners, it was estimated that the per diem amount charged covers only food, personnel, and other daily costs but contributes nothing to the ongoing costs of maintaining the facility. In addition, concern was expressed that if any of the remaining participating counties drop out of the agreement, maintenance of the facility would become impossible.

It appears that raising the per diem rate for counties that do not participate in a funding agreement is not a viable option. Counties are free to "shop" among local jail facilities to obtain the lowest per diem rate. Thus, increasing the per diem rate to cover maintenance costs would result in a loss of revenue because prisoners would not be brought from other counties. The Lake Region Law Enforcement Board recommended that every county should be required

by law to become a member of an agreement with surrounding counties for a regional law enforcement authority, and that counties be allowed to choose which group of counties they would join.

The commission reviewed jail standards provided by state law and rules for Class I, II, and III facilities and juvenile detention centers. The commission also reviewed the number, location, and classification of facilities in the state.

Commission members expressed concern with the proposal to require counties to participate in regional law enforcement authorities in several respects. One concern is that if all counties in a regional authority are required to levy at the same rate it would be an unfair burden to the counties that do not use the facility to house as many prisoners as the other counties to the agreement. Commission members also expressed concern that mandatory participation in financing a facility would probably be considerably more expensive than contracting with existing facilities for many smaller population counties. Commission members also expressed reluctance to impose more mandates for expenditures on local governments, in view of the large number of mandated expenses under existing state law.

Conclusion

The commission makes no recommendation regarding establishment of regional law enforcement authorities.

POLITICAL SUBDIVISION LEVY AUTHORITY

The primary funding source for operation of local government is the levy of real property taxes. Due to a 1979 Supreme Court decision, the 1981 Legislative Assembly extensively restructured North Dakota's property tax assessment procedures. Passage of 1981 Senate Bill No. 2323 created property classifications and assessment valuation changes for property in the state. The statewide effect of the bill for all property showed little change or slight increases in assessments for agricultural and commercial property, a slight decrease in assessments for residential property, and significant reductions in assessments for railroad and utility property. Although statewide averages showed little variation, at local levels erratic changes in tax bases were likely after passage of 1981 Senate Bill No. 2323. It was estimated at that time that assessed values would increase in 38 counties, with 25 counties showing an increase of 10 percent or more. It was also estimated that assessed values would decrease in 15 counties, with four counties having a decrease of 10 percent or more. Assessed valuations in smaller political subdivisions were estimated to be subject to potentially more radical fluctuations.

The 1981 bill contained a provision to stabilize local levying authority by allowing political subdivisions the option of using the amount levied in dollars in the previous year as a tax base, with a percentage increase. This provision was to be in effect for only two years. The 1983, 1985, 1987, and 1989 Legislative Assemblies have also enacted two-year legislation to allow political subdivisions this optional property tax levy percentage increase authority.

Enactment of this type of legislation has been necessitated by the fact that assessed valuation differences still exist and are not likely to disappear. In addition, political subdivisions that have used the percentage increase levy authority in each year since 1981 are now well above normal statutory mill levy limits and would be required to reduce budgets substantially if optional levy increase authority is not reenacted.

Recommendation

The commission recommends House Bill No. 1027 identical to the 1989 legislation allowing taxing districts to have the option of using previous levies in dollars as the basis to determine current levy limitations, with the exception that the bill recommended by the commission has no expiration date. The bill allows a taxing district to levy up to five percent more for a budget year than was levied in dollars in the base year. The base year is defined to be the taxable year with the highest amount levied in dollars of the three taxable years immediately preceding the budget year.

LOCAL ELECTION CONSOLIDATION

Under existing law county officers are to be elected at the state general election. City elections are to be held on the first Tuesday in April of each even-numbered year. School districts are required to hold annual elections on a date between April 1 and June 30 and may hold elections in conjunction with the state primary election or with regular city elections. If the school chooses to hold elections in conjunction with city elections, the school board may convert the terms of office of its members to four years rather than three years. Park district board members are to be elected at regular city elections.

Commission members expressed concern that holding too many elections decreases voter interest and results in wasteful spending. Voters in some communities will have gone to the polls five times from December 1989 through November 1990. Under current law some communities could have four regularly scheduled elections in each even-numbered year, and each city would have to hold at least three elections in those years.

The commission considered a bill draft to consolidate school, city, and park district elections with the statewide primary election. Under the bill draft school district elections would be on a biennial rather than annual basis, terms of school board members would be four rather than three years, and the beginning and ending date of terms of city officers would be the fourth Tuesday in June rather than the third Tuesday in April.

Recommendation

The commission recommends Senate Bill No. 2023 to consolidate elections of school districts, cities, and park districts with the statewide primary election on the second Tuesday of June in each even-numbered year. The bill would become effective with the primary election of 1992 and contains transition provisions to provide that the 1993 election will be the last regular school election held in an odd-numbered year. The bill is intended to reduce costs of local elections by consolidation and to increase voter inter-

est and turnout. After consolidation of local elections with the statewide primary election, only the statewide primary and general elections would be required by law in even-numbered years.

JOINT OR COOPERATIVE ACTION OF POLITICAL SUBDIVISIONS

Dozens of sections of the North Dakota Century Code authorize joint exercise of powers between or among political subdivisions in specific instances. In addition, two provisions of law provide general authority for joint efforts of political subdivisions. Article VII, Section 10, of the Constitution of North Dakota provides that agreements for cooperative or joint administration of any powers or functions may be made by any political subdivision with any other political subdivision, with the state, or with the United States. Similar authority is contained in NDCC Section 54-40-08, which allows any political subdivision to enter agreements with another political subdivision for joint action to carry out any function or duty that one of the subdivisions may perform under law. In addition, the potential of home rule authority for cities and counties to expand cooperative efforts among political subdivisions is virtually unlimited.

Because North Dakota law provides broad authority for cooperation among political subdivisions, it was recommended by the 1987-88 interim Political Subdivisions Committee, which recommended the legislation that established the Advisory Commission on Intergovernmental Affairs, that the commission make encouragement of cooperation among local governments a standing concern. The commission received testimony from representatives of local governments in Adams, Burleigh, Cass, and Griggs counties describing efforts in those areas to cooperate in the provision of services or to consolidate functions among local governments. It appears that significant cost savings and improved service are being provided to taxpayers through these efforts. It also appears that these efforts are of relatively recent origin and are the product of innovative

local officials dealing with needs for improved services and reduced expenditures.

Conclusion

The commission makes no recommendation for changes in state law regarding cooperative agreements between political subdivisions. It appears that state law adequately provides the authority for such agreements. It appears that the greatest need in this area is for information to allow political subdivision officials to become aware of the potential for combining services. The commission intends to play a role in this education process by gathering information on ongoing efforts of political subdivisions and serving as a source of information on successes and failures in cooperative agreements among political subdivisions.

PRIORITIES FOR FUTURE STUDY

Because the Advisory Commission on Intergovernmental Relations differs from Legislative Council interim committees in the fact that it is an ongoing study commission, the commission chose to establish goals for its study during the next two years. In this respect the commission obtained the assistance of the organizations that appoint commission members. Each organization submitted a list of its areas of priority for study by the commission, and the commission established its priorities for study from reviewing these lists.

During the next two years the commission will concentrate its efforts on studying methods to encourage combination of services and equipment among political subdivisions, including methods to provide incentives for cooperation and streamlining in local government. Establishment of educational conferences or workshops for local officials will be reviewed as part of this study. The commission will also study all revenue sources available to political subdivisions, and the possibility of consolidating mill levy limitations under state law to reduce the great number of separate mill levies.

AGRICULTURE COMMITTEE

The Agriculture Committee was assigned three studies. House Concurrent Resolution No. 3053 directed a study of the problems associated with the grading and purchasing of barley for malting purposes. House Concurrent Resolution No. 3057 directed a study of the laws relating to state and local filing of liens and security interests relating to farm products. Senate Concurrent Resolution No. 4036 directed a study of the feasibility of establishing an unused pesticide and pesticide container disposal program. The Legislative Council chairman assigned to the committee the responsibility to receive information on the effect of diking on the Red River and the damage caused by the 1989 flood. The Legislative Council assigned to the committee the responsibility to receive annual reports on land reclamation from the Reclamation Research Advisory Committee and the Land Reclamation Research Center of North Dakota State University.

Committee members were Senators Gary J. Nelson (Chairman), Ben Axtman, Layton Freborg, E. Gene Hilken, Adam Krauter, Dean J. Meyer, Walter A. Meyer, Duane Mutch, Allen Richard, and F. Kent Vosper and Representatives Robert Huether, Dale Marks, Arthur Melby, Eugene J. Nicholas, Robert E. Nowatzki, Don Shide, Kelly Shockman, Kenneth N. Thompson, Dick Tokach, and Wilbur Vander Vorst.

The report of the committee was submitted to the Legislative Council at the biennial meeting of the Council in November 1990. The report was adopted for submission to the 52nd Legislative Assembly.

MALTING BARLEY STUDY

Background

The administrator of the Federal Grain Inspection Service of the United States Department of Agriculture has adopted standards and procedures for grading barley as malting barley. The malting and brewing industry is not, however, obligated to use these standards when purchasing barley.

In the summer of 1988, malting barley prices reached \$4 a bushel. Elevators had purchased significant quantities of this "malting" barley. Some of it was, however, rejected by the malting and brewing industry. While it met the federal standards for malting barley, the industry did not believe the barley met its quality requirements. As a result, the barley had to be sold as feed barley at a much lower price and the elevators incurred sizeable losses. While North Dakota Century Code (NDCC) Section 60-02-05 contains a procedure for resolving disputes between the party delivering and the party receiving barley at a public warehouse, no procedure exists for resolving disputes between the malting and brewing industry and the elevator or producer regarding barley's fitness for malting purposes.

Testimony

Testimony indicated that the grading of barley has several inherent problems. An analysis of color is subjective, germination testing is not standardized,

protein testing by near infrared reflectance analyzers is not standardized, and no formal system exists for handling disagreements regarding protein content, germination, color, or varietal purity.

An industry representative testified that federal grading standards rarely affect a maltster's decision to purchase barley. Maltsters try to purchase barley of the highest quality, but recognize that such barley may not be available in the needed quantities at all times during the marketing year. Therefore, what constitutes malting barley quality may vary from firm to firm and from crop year to crop year.

Testimony indicated that in 1988, when barley prices were high, much old barley was moved out of multiyear storage and onto the market. Heat damage, mold, insect damage, and other conditions often present in multiyear storage crops affect germination. As a result, many maltsters increased the scope of their examinations.

Industry representatives testified that unfair treatment of barley sellers is rare, but if instances did arise, they would be willing to obtain a third-party analysis of the barley in question. However, they indicated that these isolated incidents did not warrant legislative intervention and should be left to self-regulation by the marketplace.

The committee recognized that most North Dakota barley enters interstate commerce and, therefore, any proposed legislation would have to be considered in light of the state's limited authority to regulate interstate commerce.

Conclusion

The committee makes no recommendation with regard to the malting barley study.

LIENS AND SECURITY INTERESTS RELATING TO FARM PRODUCTS STUDY

Background

In North Dakota the Uniform Commercial Code (UCC) and central notice system are separate filing systems. North Dakota Century Code Section 41-09-40(1)(a) prescribes that secured parties gain UCC perfection by filing a financing statement against farm products, including growing crops, in the office of the register of deeds in the county of the debtor's residence, or if the debtor is a nonresident, in the county where the farm products are kept. At the same time, secured parties must file central notice system forms with the Secretary of State to gain protection against buyers, commission merchants, and selling agents dealing with farm products produced in North Dakota.

When North Dakota created the central notice system for security interests, it included statutory agricultural liens within the system. These liens differ from other liens with security interests in that they arise by statute, rather than by consent of the debtor. A statutory lienholder protects an interest by filing locally with the register of deeds and then filing a central notice system form with the Secretary of State.

The committee examined the duplication, the costs, and possible alternatives to the current system.

Testimony

The current requirement of filing with the Secretary of State to gain protection under the central notice system and with the register of deeds to perfect a security interest or to obtain a lien on farm products is costly. A \$5 fee is charged for filing, assigning, continuing, or terminating a form. A representative of the Secretary of State estimated that there are over 376,000 active filings in North Dakota counties. The Secretary of State's office has 131,000 filings and 52,000 of these are duplicated in the registers of deeds' offices. Testimony indicated that having one filing system, in which one form could be used to perfect a security interest or obtain a lien and to gain central notice system protection, would save time, money, and paperwork for lenders, producers, and governmental entities.

The committee received reports on lien laws and filing in Montana, Idaho, and Nebraska. The Deputy Secretary of State traveled to Nebraska to review that state's system and reported that Nebraska has developed a central notice system in which effective financing statements are filed locally, at the county clerks' offices. Each county office is connected by computer link to the Secretary of State's office. When an effective financing statement is entered locally, it is immediately transmitted to the statewide central notice system.

The Deputy Secretary of State testified that it would be possible to link the 53 register of deeds' offices with the Secretary of State, via the state's mainframe computer. This system would allow searches for liens or security interests filed in any county, to be conducted from any register of deeds' offices, the Secretary of State's office, or from a personal computer having access to the Secretary of State's data base. This system would also provide local access to other sources of information such as tax equalization, public health, and legislative data bases. Even educational purposes could be served by the system.

It was estimated that costs of the link would be \$332,000. This includes equipment, installation, software program development, training, and contingencies. User fees could be established to ensure adequate revenue for the system's operation and maintenance. It was estimated that 50,000 filings would be made annually.

If a \$10 fee were charged at the time of filing, to cover filing and termination fees, \$500,000 would be collected. Additional revenues would be generated from record searches done by a register of deeds. Each filing office would receive a pro-rata share of the filing fees and search fees, less the cost of maintaining the statewide system. A representative of the Secretary of State indicated that the fees returned to each of the 54 filing offices would cover their operating costs.

Two bill drafts were reviewed by the committee. One bill draft provided that a security interest or a lien could be perfected by filing only at the Secretary of State's office. Representatives of the North Dakota Bankers Association and the Independent Community Banks of North Dakota preferred this option

due to greater quality control and less expense because personnel would not be needed at 54 locations.

The other bill draft provided that a security interest in farm products or a statutory agricultural lien could be perfected by filing at either the Secretary of State's office or in any register of deeds' office in the state. One filing form would serve the dual purposes of becoming a financing statement under the UCC and an effective financing statement under the central notice system. The bill draft also provided that all liens and security interests filed before January 1, 1992, must be refiled prior to July 1, 1992, at the place where the earliest original document was filed. Any document not refiled within that time would lapse. No fees are to be charged for the refile of any security or lien document.

In addition, the bill draft extended the time for filing an agricultural supplier's lien from 90 to 180 days; repealed a provision that required secured parties who file with the central notice system to give debtors notice of the filing; and allowed security agreements, financing statements, and other documents to be filed by facsimile transmission, if the original document or an acceptable copy is received by the Secretary of State or the register of deeds within five working days.

Proponents of this latter bill draft testified that it would greatly reduce the number of filings being made under existing law, that it would, through the local filing system, provide easy and widespread access to lien and security information, and that the filing and searching fees which would be generated would provide much needed revenue to county governments.

Recommendation

The committee recommends Senate Bill No. 2024 requiring the Secretary of State to establish a computerized central notice system under which a person could perfect a security interest in farm products or create a statutory agricultural lien by filing at the Secretary of State's office or at any register of deeds' office in the state.

PESTICIDE WASTE AND PESTICIDE CONTAINER STUDY

Background

Empty pesticide containers and waste pesticides create disposal problems for applicators of the chemicals. Waste pesticides include canceled or suspended pesticides, pesticides damaged through improper storage, outdated or surplus amounts of pesticides, and pesticides that are no longer used because of farm management practices such as rotation or because they have been replaced by more effective pesticides. Improperly rinsed pesticide containers and most pesticides constitute hazardous waste. Since no landfills are approved for hazardous waste disposal in North Dakota, pesticide containers and waste pesticides are often disposed of improperly, thereby creating the potential for serious human health problems, ground water contamination, and other environmental degradation. Both federal and state laws make users of pesticides responsible for applying their pesticides according to label directions and for properly disposing of excess pesticides and their containers.

Federal Law

Pesticides are regulated by both state and federal law. The Federal Insecticide, Fungicide, and Rodenticide Act of 1947 establishes a program of environmental pesticide control. The program is administered by the United States Environmental Protection Agency. The federal law addresses product registration, labeling, and pesticide applicator certification. States are authorized to regulate the sale or use of any federally registered pesticide to the extent the sale or use does not violate the federal law. Also, primary responsibility for enforcing pesticide use violations is placed on the states.

Prior to 1972, the federal law did not address the problems of disposal or storage of excess pesticides and pesticide containers. The Federal Environmental Pesticide Control Act of 1972 altered and broadened the scope of the Federal Insecticide, Fungicide, and Rodenticide Act by requiring the administrator of the Environmental Protection Agency to establish procedures and regulations for the disposal or storage of packages and containers of pesticides, for disposal or storage of excess amounts of such pesticides, and for acceptance and disposal of pesticides that are no longer registered. Pursuant to this authority, the Environmental Protection Agency adopted recommended procedures for the disposal and storage of pesticides, pesticide containers, and pesticide-related wastes. Although the recommended procedures were mandatory only for the Environmental Protection Agency, it was hoped that the regulations and recommended procedures would alert all federal, state, and local government agencies and private manufacturers, handlers, and users of pesticides to the need for proper disposal and storage of excess pesticides, pesticide containers, and pesticide-related waste. Although the recommended procedures vary depending on the pesticide, the regulations generally recommend that pesticides and containers be incinerated, buried in a specially designated landfill, or stored temporarily for disposal.

Amendments to the Federal Insecticide, Fungicide, and Rodenticide Act, which became effective December 24, 1988, authorize the administrator to (a) require registrants or applicants for the registration of a pesticide to submit or cite data regarding methods for the safe storage and disposal of excess quantities of the pesticide; (b) require that pesticide labels contain requirements and procedures for the transportation, storage, and disposal of the pesticide, the pesticide container, any rinsate containing the pesticide, or any other material used to contain or collect excess or spilled quantities of the pesticide; and (c) require the registrant of a pesticide to provide evidence of sufficient financial and other resources to carry out a recall plan and provide for the disposition of a pesticide in the event the pesticide is suspended and canceled.

The administrator is required to promote the safe storage and disposal of pesticides by adopting regulations for the design of pesticide containers. The regulations must ensure that the designs accommodate procedures for the removal of pesticides from the containers and the rinsing of the containers. In addition, the designs must facilitate the safe use, refill, reuse, and disposal of the containers. The ad-

ministrator must require compliance with the regulations by December 1993.

The administrator is also required to adopt regulations by December 1991 prescribing procedures and standards for the removal of pesticides from containers prior to disposal. The regulations may specify procedures and standards for triple rinsing or the equivalent degree of pesticide removal. They may also specify procedures for reuse, whenever practical, or disposal of rinse water and residue. They may be coordinated with requirements for the rinsing of containers imposed under the federal Solid Waste Disposal Act. The administrator may exempt products intended solely for household use. No state may exercise primary enforcement responsibility or certify an applicator after December 1993, unless the administrator determines that the state is carrying out an adequate program to ensure compliance with these regulations.

The administrator is also required to study encouraging or requiring the return, refill, and reuse of pesticide containers, the development and use of pesticide formulations that facilitate the removal of pesticide residues from containers, and the use of bulk storage facilities to reduce the number of pesticide containers requiring disposal.

According to officials at the Environmental Protection Agency, the federal regulations containing the recommended procedures for disposal of pesticides and pesticide containers will be completely rewritten. The Environmental Protection Agency has contracted with the Research Triangle Institute to assist in the study required by the administrator. The institute is conducting a survey of the 50 states to identify the procedures and practices used in those states with regard to disposal of waste pesticides and pesticide containers. All states will be required to comply with the new federal regulations.

State Law

In response to the federal Environmental Pesticide Control Act of 1972, the state of North Dakota enacted NDCC Chapter 4-35, the North Dakota Pesticide Act of 1975. Section 4-35-02 creates a Pesticide Control Board consisting of the Commissioner of Agriculture, the director of the Cooperative Extension Division of North Dakota State University, and the director of the Agricultural Experiment Station at North Dakota State University. Section 4-35-24 places responsibility for enforcing the chapter on the Commissioner of Agriculture. Section 4-35-20 provides that no person may discard, store, display, or permit the disposal of surplus pesticides and empty pesticide containers and devices in such a manner as to endanger man and his environment or to endanger food, feed, or any other products that may be stored, displayed, or distributed with such pesticides. That section requires the board to adopt regulations governing the discarding, storage, display, or disposal of any pesticide, pesticide containers, or devices. Pursuant to this authority the Pesticide Control Board adopted regulations relating to the disposal of pesticides. North Dakota Administrative Code (NDAC) Section 60-03-01-06 provides that empty pesticide containers must be stored or disposed of in accordance with label recommendations

and in a manner that will not endanger humans, animals, or the environment. Nonreturnable empty pesticide containers must be rinsed, and any secondary use that would endanger humans, animals, or the environment is prohibited.

If a pesticide is a hazardous waste, it must be stored and disposed of under the laws relating to hazardous waste, unless it is exempt. North Dakota Administrative Code Section 33-24-02-04 provides that household waste is not hazardous waste. Household waste is any waste material derived from households including single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds, and day use recreation areas. Household cleaners, yard and garden products, automotive products, and paint and solvent products are examples of household hazardous wastes that are exempt.

North Dakota Administrative Code Section 33-20-05-05 provides that the disposal of hazardous waste is the responsibility of the waste's owner. That provision prohibits hazardous waste from being disposed of in a disposal operation site, except in amounts normal in household wastes, unless approved by the Department of Health and Consolidated Laboratories. In addition, farmers who generate waste pesticides that are hazardous waste are exempt from complying with the hazardous waste standards for generators, transporters, or treatment, storage, and disposal facilities, if the farmer triple rinses each empty pesticide container and disposes of the pesticide residue on the farmer's own land in a manner consistent with the disposal instructions on the pesticide label. A farmer can meet the triple-rinsing requirement if the container or inner liner has been triple rinsed using a solvent capable of removing the commercial chemical product or a manufacturing chemical intermediate, the container or inner liner has been cleaned by another method that has been shown in the scientific literature or by tests conducted by the generator to achieve equivalent removal, or in the case of the container, if the inner liner that prevented contact of the commercial chemical product or manufacturing chemical intermediate with a container has been removed. In addition, NDAC Section 33-20-05-05 provides that nonreturnable empty pesticide containers must be rinsed and punctured in order to avoid secondary use if the punctured containers will not endanger humans, animals, or the environment.

North Dakota Waste Management Task Force

In July 1988 the Governor appointed a Waste Management Task Force to review and define the problems, identify interim goals and objectives, and recommend a future direction for solid waste management in North Dakota. The task force submitted a report to the Governor in May 1989, entitled *Municipal Waste Management Issues in the State of North Dakota*. The report found that pesticides and pesticide containers are two of the leading potential water pollution problems in North Dakota.

Many pesticides banned by the Environmental Protection Agency are being stored on private property. In other states, amnesty programs have been utilized to collect these pesticide wastes. However,

many dumpsites remain unreported because of ignorance, negligence, or fear of legal action. Pesticides and pesticide containers are problems because of the hazardous nature of many pesticide chemicals and restrictions on container handling and disposal. The task force recommended that a statewide pesticide disposal and management plan be developed and funded in North Dakota.

In addition to waste pesticides, empty pesticide container disposal is an ongoing problem for pesticide users and applicators. The only disposal method for commercial applicators is to triple rinse containers and dispose of them in a sanitary landfill. Once pesticide containers are properly rinsed, they are considered solid waste and can be disposed of in sanitary landfills. Many municipal landfills in North Dakota will not accept pesticide containers even when triple rinsed and handled according to state and federal laws. Part of the problem is that no one can be certain whether the containers have been adequately rinsed and drained. Landfill operators have the right to refuse container disposal because they can be held liable for subsequent problems at the landfill. In addition, many containers may have been put to other uses, even though this is strictly forbidden. The task force found that there is a need to develop a pesticide container disposal plan to address these problems.

Programs in Other States

The committee reviewed the programs of Illinois, Iowa, Kansas, Maine, Minnesota, North Carolina, and Washington for the collection and disposal of waste pesticides, and the programs in Illinois, Maine, Minnesota, and Mississippi for pesticide container disposal.

Waste Pesticides Collection and Disposal Programs

Illinois is conducting a pilot project administered by the Department of Agriculture in cooperation with the Illinois Environmental Protection Agency. Under this program, the local governmental units and non-profit agricultural organizations may receive grants of 50 percent of the cost or \$25,000, whichever is less, to assist in the implementation of a model pesticide collection program. The program is funded from the pesticide control fund, which consists of pesticide registration fees, and the hazardous waste fund. A statewide program is to be established by January 1, 1992.

In Iowa the Department of Natural Resources has operated several toxic cleanup days throughout the state. The collection, transportation, and disposal is accomplished by a qualified waste handling firm. The department provides booklets regarding the proper use and disposal of household hazardous wastes to retailers for distribution to customers. The program is directed toward the collection and disposal of small amounts of hazardous wastes stored in residences and on farms. The program is funded from lottery revenues and the household hazardous waste account, which consists of civil penalties and fines for violations of environmental laws and fees based on gross sales of household hazardous wastes by

retailers and distributors of agricultural or lawn and garden use pesticides.

In Kansas the Secretary of Health and Environment has established rules for conducting hazardous waste collection programs and making grants to local governmental units of up to half the cost of conducting hazardous waste collection programs. The program applies to homeowners, other householders, and farmers but specifically excludes persons generating hazardous wastes in regulated amounts. The secretary is required to supervise the programs and ensure that the local governmental units contract with a bonded waste handling company for implementation of the program. The program is funded by a general fund appropriation, funds from the hazardous waste collection fund, and funds from the water plan fund.

Maine has a program under which the state collects only illegal or unusable pesticides from farmers and homeowners and transports them to a hazardous waste facility for disposal. The state assists those with usable or legal pesticides by finding ways to dispose of them. The program is funded by appropriations from the general fund.

Minnesota's waste pesticide collection program requires the Commissioner of Agriculture to provide informational and educational materials regarding waste pesticides and the management of waste pesticides to the public and authorizes the commissioner to enter into cooperative agreements with state agencies and local governmental units for administration of the waste pesticide collection program. The department is limiting its first collection effort to canceled and banned pesticides and is not charging fees to users. The department anticipates charging fees for the collection and disposal of unwanted and unused pesticides to encourage people not to purchase more than needed. The program is funded through the waste pesticide account, which consists of fees assessed pesticide users to participate in the collection program and \$600,000 from annual pesticide registration fees.

In North Carolina the Department of Agriculture has established collection sites where homeowners, farmers, and institutions can bring waste pesticides certain days each month. Commercial applicators, dealers, and small businesses cannot use the program. The department donates the products it receives to others who want them and disposes of the rest. The program is funded by appropriations from the general fund.

In Washington the Department of Agriculture has established a program to collect suspended, canceled, and unusable pesticides from farmers, commercial applicators, and public operators. The program is funded from the toxics control account which consists of taxes on hazardous substances.

Pesticide Container Collection and Disposal Programs

Illinois has a program under which the Department of Energy and Natural Resources, in consultation with the Environmental Protection Agency and the Department of Agriculture, must design and implement a pilot pesticide container collection project to collect and recycle empty triple-rinsed pesticide

containers, develop, demonstrate, and promote proper pesticide container management, and evaluate current pesticide container management methods and the cause and extent of problems associated with pesticide containers. The Department of Agriculture is required to establish and operate temporary collection sites for pesticide containers. During the pilot project, the department is required to conduct surveys and collect information on proper and improper pesticide container storage and disposal and report to the General Assembly its conclusions and recommendations for legislation. The program is funded by available department funds.

Maine has established a pesticide container deposit and disposal program administered by the Maine Pesticide Control Board of the Department of Agriculture. Under this program, people who purchase restricted use pesticides are required to pay a deposit on the container. When the pesticide container is returned, it must be triple rinsed or the deposit is not refunded. The deposit is \$5 on containers between one-half pint and 30 gallons and \$10 for containers over 30 gallons. The program is funded by general fund appropriations.

Minnesota has a pilot project administered by the Department of Agriculture, in consultation and cooperation with the Pollution Control Agency and the Minnesota Extension Service, that is similar to the program in Illinois. The pilot project is funded out of available department funds.

Mississippi has a program administered by the Department of Environmental Quality and Pollution Control, in conjunction with the Department of Agriculture and Commerce and the Department of Natural Resources. The program was started as a pilot project and featured education on proper rinsing of containers, collecting containers, and conducting a feasibility study relating to recycling. Educational materials were developed to promote the program and provide information to farmers regarding the importance of triple rinsing. The program was funded by an \$80,000 grant from the United States Environmental Protection Agency plus volunteer help from counties, labor and equipment companies, chemical companies, and the Extension Service.

Testimony and Committee Considerations

Generally, pesticides are hazardous waste and must be disposed of in a hazardous waste facility. The proper disposal of hazardous waste is expensive and establishing a collection and disposal program for waste pesticides would have a major economic impact on the state. For example, a pilot project conducted in Cass County for the collection and disposal of waste pesticides and pesticide containers showed costs of approximately \$600 to collect one 50-gallon container of pesticides. This did not include costs for shipping and disposal. The disposal of liquids would be a major element of total program costs. Testimony indicated that the amount of material that could potentially be handled under a waste pesticide collection and disposal program was unknown.

The committee responsible for conducting the pilot project in Cass County sent 1,200 surveys to farmers in the state to determine the amount of waste pesticides located on farms. The committee received 116

responses. The survey results showed 2,105 pounds of unneeded dry chemicals and 393 gallons of liquid waste. Many of the reported pesticides were no longer registered. Estimates from two waste handling companies indicated that disposal of these wastes would cost approximately \$60,000, in addition to expensive lab charges for identification of unknown pesticides. It was suggested that the lack of response to the survey may have been due to the risk of liability and resulting costs associated with cleanup and disposal.

The Department of Health and Consolidated Laboratories has conducted four small quantity inventory programs. Under these programs, the department contracted with a company qualified to handle hazardous waste. The department obtained the names of people who had small amounts of hazardous wastes and gave the names to the contractor, who then contacted the people and made arrangements to collect the waste. The company was reimbursed by the department for properly disposing of the waste. Funding was in the form of United States Environmental Protection Agency grants of \$60,000 to \$80,000 per project.

A representative of the waste handling company that received the contract in 1988 and 1989 said the company collected waste from farms, city homes, banks, extension agents, schools, drugstores, state agencies, fish and wildlife groups, veterinary clinics, businesses, grain elevators, and nurseries. On several occasions, the company collected much more waste than was specified on the list they received from the department. A number of people registered with the department had large amounts, which were beyond the scope of the company's contract with the state. The representative indicated that there is a vast amount of waste pesticide in the state. Concern was expressed that waste pesticides were being disposed of improperly because of the costs associated with proper disposal.

In addition to the cost of establishing a waste pesticide collection and disposal program, the state would be faced with liability for such a program. First, there is the general liability a state or local government faces when sponsoring any gathering or event that may result in damage or injury to persons or property. Second, the state would inherit the liability associated with the transportation of the waste and disposal of collected wastes at a hazardous waste facility.

Federal law requires the administrator of the Environmental Protection Agency to adopt regulations regarding pesticide containers. These regulations would not be adopted until sometime after the interim committee adjourned. Because the state would have to comply with these regulations, the committee was concerned about the impact that the federal regulations could have on any pesticide container collection and disposal program proposed by the committee. The chief of the Pesticide Management and Disposal staff, Environmental Fate and Effects Division, Office of Pesticide Programs, Environmental Protection Agency testified that the Environmental Protection Agency intended to adopt minimum performance standards for containers, such as requiring them to be clean, safe when used, and safe at

disposal. Each state is to be responsible for determining container disposal methods.

Testimony indicated that the chemical industry is making a conscious effort to reduce the number of containers needing disposal by placing products in reuseable mini-bulk containers, paper bags that can be burned, dissolvable containers, and by manufacturing pesticides with smaller use rates.

The committee reviewed a bill draft, based on the pesticide container collection and disposal programs in Illinois and Minnesota. The Commissioner of Agriculture, in consultation with the State Health Officer, the State Engineer, the State Geologist, the director of the North Dakota State University Extension Service, the administrative officer of the State Soil Conservation Committee, and the Attorney General, would be required to design and implement a pilot project to (a) collect and recycle or dispose of empty, properly rinsed agricultural pesticide containers, (b) demonstrate and promote proper agricultural pesticide container management, (c) evaluate current pesticide container management methods and the problems associated with pesticide containers, and (d) evaluate recycling options and investigate markets and business opportunities that encourage recycling of containers for resource recovery.

The committee considered whether the program should be funded by a fee of 50 cents for each pesticide container sold in the state for agricultural application. Testimony indicated that a fee based on sales would be much more equitable than a fee per container. As a result, the committee initially determined that the registration fee for pesticides should be changed from \$25 per product to one-tenth of one percent of annual gross sales of each product sold within the state and annual gross sales of pesticides sold outside the state but used in the state for the 1991 calendar year and one-fifth of one percent thereafter, with a minimum fee of \$150 per product.

The first \$600,000 collected each year should be credited to the agricultural pesticide container disposal fund. This fee is similar to fees imposed in Minnesota. However, Minnesota credits the first \$600,000 to the waste pesticide collection account for the collection of waste pesticides. Testimony indicated the revenue raised by this proposed fee would generate a great deal more money than would be necessary for a pesticide container collection and disposal program. Costs of single county programs in other states have ranged from \$20,000 to \$30,000. Startup funding for Mississippi's program consisted of an \$80,000 grant from the Environmental Protection Agency. Much of this money was used to develop a video and other educational materials. Iowa's program was initially funded by a \$70,000 grant from the Environmental Protection Agency. Testimony indicated that some recyclers may offer five to 10 cents per pound for plastic at the granular or chipping site. Testimony also indicated that the program would be almost self-supportive, if farmers returned properly rinsed containers to a state designated collection site, where the containers could be inspected and certified as solid waste. As a result, the committee determined that the registration fee should be \$60 per product with the additional \$35 credited to the agricultural

pesticide container fund. With approximately 5,500 pesticides registered annually, the increase in fees would generate \$192,500 for the fund each year.

Recommendation

While the committee determined that there is a need for a waste pesticide collection and disposal program, the cost of funding such a program together with the potential liability caused the committee to proceed cautiously and recommend a program limited to the collection and disposal of properly rinsed pesticide containers.

The committee recommends Senate Bill No. 2025 to require the Commissioner of Agriculture, in consultation with a number of other state officials and representatives of various interests (including agribusiness organizations, farm organizations, and the Legislative Assembly), to design and implement a pilot project to collect and recycle or dispose of agricultural pesticide containers. The Commissioner of Agriculture would be required to provide for the establishment and operation of temporary collection sites for the containers, and the pilot project would be limited to two county areas. If the Commissioner of Agriculture determines the project should be continued or implemented statewide, the commissioner is required to recommend appropriate legislation to the 1993 Legislative Assembly. The bill appropriates \$385,000 for the pilot project, beginning July 1, 1991, and ending June 30, 1993.

RED RIVER DIKING REVIEW

Background and Testimony

The committee met in Grafton to consider the effects of diking on the Red River and the damage caused by the 1989 flood. The Red River diking issue began in 1975, when 23 inches of rain fell southwest of Fargo and extensive flooding resulted. Dikes were constructed on the Minnesota side of the Red River. The same could not be done on the North Dakota side, because water from the Red River could back up the Marais, Turtle, and Forest rivers and flow around any dikes.

In 1978 Minnesota and North Dakota entered an agreement that permitted the construction of dikes from the Boix de Sioux River in Richland County to the Canadian border. This agreement allowed a one-foot rise in the dikes per 10-year flood event. However, after significant flooding in 1979, the two states agreed upon a six-inch increase in a 100-year flood event.

Representatives of various entities continued to work toward a final agreement, but when negotiations broke down, in October 1981, North Dakota filed suit against Minnesota. Further negotiations took place and by 1984, the two states stipulated that the dikes on the Minnesota side of the river could be built to the level of the 1975 flood, while those on the North Dakota side would be one foot lower. Although North Dakota plaintiffs felt that this stipulation was unfair, they realized it was the best solution that could be reached at the time.

Following the agreement, a technical committee was formed to determine the final dike elevation. When the technical committee could not come to an agreement, North Dakota returned to court for an

order directing Minnesota to remove its dikes. Many Minnesota dikes were removed, but issues involving the interpretation of "natural ground," which affects a determination of dike height, lingered. Since Minnesota dikes could withstand a flood event of 43,000 cubic feet per second, the spring flooding of 1989, which was 40,000 cubic feet per second, pushed water into North Dakota. In the absence of dikes, 60 to 90 percent of the flood water would have run back into Minnesota.

The 1989 flooding was costly. Testimony showed that Walsh County spent \$340,000 for necessary road repairs and, in effect, spent 15 percent of its road budget on two percent of its roads. Gravel roads often sustained damage up to \$30,000 per mile. Climatological data showed that despite a lack of precipitation in recent years flooding is on the increase.

Methods for addressing the flooding problem were suggested. They included equalizing the elevation of North Dakota and Minnesota dikes along the Red River, removing dikes on both sides, constructing ring dikes to protect farmsteads in the flood plain and building upstream water retention dams to hold water in watershed areas designed for a controlled release of all runoff.

Testimony indicated that representatives of local landowners, the North Dakota State Water Commission, the Minnesota Department of Natural Resources, and the Corps of Engineers are trying to facilitate a Minnesota-North Dakota study regarding the Red River Basin. Efforts are underway to obtain \$500,000 from the United States Senate Appropriations Subcommittee on Energy and Water Development for the 1991 fiscal year. This money would go to the Red River Basin Technical Resource Service for the development and implementation of state and local water resource initiatives within the Red River Basin and subbasins in North Dakota and Minnesota.

Conclusion

The committee makes no recommendation with regard to the effects of diking on the Red River and damage caused by the 1989 flood.

RECLAMATION RESEARCH REPORTS

Reclamation Research Advisory Committee

North Dakota Century Code Section 38-14.1-04.1 establishes a three-member Reclamation Research Advisory Committee, appointed by the Governor. The committee's responsibilities include taking an inventory of all reclamation research projects in the state, reviewing all past and current reclamation research projects to identify research needs, prevent duplication, and establish priorities for research, reviewing proposed reclamation research projects administered by the Public Service Commission, and determining which reclamation research projects should be funded. The Reclamation Research Advisory Committee also recommends to the Public Service Commission future reclamation research budgets to be administered by the commission. The Reclamation Research Advisory Committee is required to prepare yearly reports for submission to the Legislative Council on the status of all reclamation research projects, conclusions reached, and future goals and objectives.

The Reclamation Research Advisory Committee summarized information about 19 ongoing and completed research projects conducted in North Dakota on mining and reclamation issues. It also developed technical briefs on 53 scientific papers and reports based on research conducted in North Dakota. The committee is acting in conjunction with the Lignite Research Council, with respect to reclamation research project evaluations for funding, in order to resolve problems with overlapping responsibilities.

Land Reclamation Research Center

Senate Bill No. 2005 (1989) appropriated \$1,525,128 to the Land Reclamation Research Center. The center is a branch station of the Agricultural Experiment Station of North Dakota State University. The center's laboratories and offices are located in Mandan at the Northern Great Plains Research Center, Agricultural Research Service, United States Department of Agriculture. Of the amount appropriated to the center, \$827,300 is a transfer from the lignite research fund. The funds appropriated to the center are to be used for establishing criteria to evaluate reclamation success on vegetative reestablishment and soil parameters for bond release, the effect of postmine topography on soil moisture levels and crop yields, effective reclamation techniques on soil compaction and soil productivity, and methods of evaluating and controlling runoff and erosion from reclaimed land.

The Land Reclamation Research Center must file an annual report with the Legislative Council, the Office of Management and Budget, and the Public Service Commission on August 1, 1989, August 1, 1990, and August 1, 1991. Annual reports have been required by law since August 1, 1985. Each annual report is to contain a description and analysis of the

conclusions reached from each reclamation research project that has been conducted the preceding year, as well as brief descriptions and analyses of tentative conclusions reached from all ongoing projects. Each report is to include recommendations for reducing unnecessary and duplicative regulatory costs. In order for a new reclamation research project to be approved for funding, the project must pertain to the development of data and conclusions that will assist in returning the land to its original or better productivity, assist in returning the land to an approved postmining land use as soon as possible, and assist in effectively reclaiming the land to its original or better productivity, while reducing unnecessary regulatory costs.

The center recommends a continuation of efforts encouraging the Office of Surface Mining of the United States Department of the Interior to allow the mixing of comparable topsoil materials for prime and nonprime soils for reclaiming prime land, development of more definitive criteria for evaluating reclamation success for bond release, development of better criteria for estimating the quality of underlying soil as a means for determining the amount of soil that needs to be removed for replacement and respreading after mining, and continued work on runoff and erosion. Highlights of the center's research include developing a model of productivity, researching compaction effects on productivity, and researching different methods of using fly ash and other waste ashes from the power plants to reclaim land.

Conclusion

The reports are on file in the Legislative Council office. The committee accepted the reports and took no further action with regard to them.

BUDGET SECTION

The Budget Section was assigned the following duties for the 1989-91 biennium either by statute, resolution, or by Legislative Council directive:

1. North Dakota Century Code Section 15-10-12.1 requires the Budget Section to review and act on State Board of Higher Education requests for authority to construct buildings or campus improvements on land under the board's control when the construction is financed by donations, gifts, grants, and bequests; and to act upon requests from the board for authority to sell any property or buildings which an institution of higher education has received by gift or bequest.
2. North Dakota Century Code Section 15-10-18 requires institutions of higher education to charge nonresident students tuition in amounts to be determined by the State Board of Higher Education with the approval of the Budget Section.
3. North Dakota Century Code Section 21-11-05 provides for the Economic Development Commission to file applications for natural resources development bond issues with the Legislative Council. The Legislative Council is to prepare and submit any necessary legislation for authorization of issuance of bonds or appropriation of funds. The loans from the bond issue can be made to any qualifying enterprise to plan, acquire, or improve facilities for the conversion of North Dakota natural resources into low cost power and the generation and transmission of such power.
4. North Dakota Century Code Section 50-06-05.1(18) provides that the Department of Human Services, with the approval of the Budget Section, may terminate the food stamp program should the rate of federal financial participation and administrative costs provided under Public Law 93-347 be decreased or limited, or should the state or counties become financially responsible for all or a portion of the coupon bonus payments under the Food Stamp Act.
5. North Dakota Century Code Section 50-06-05.1(20) provides that the Department of Human Services, with the approval of the Budget Section, may terminate the energy assistance program should the rate of federal financial participation and administrative costs be decreased or limited to less than 50 percent of the total administrative costs, or should the state or counties become financially responsible for all or a portion of the cost of energy assistance program benefits.
6. North Dakota Century Code Section 54-14-01.1 requires the Budget Section to review periodically the actions of the Office of the Budget (a division of the Office of Management and Budget) regarding the following budget office statutory duties: (1) the requirement that itemized statements be filed before payment of claims against the state; (2) regulations regarding departmental payroll procedures; (3) use of electronic funds transfer systems for payment of departmental payrolls; (4) regulations regarding standardized voucher forms and disapproval of claims; and (5) withholding from state employee compensation.
7. The 1973 Legislative Assembly assigned the duties of the auditing board to the Executive Budget Office. North Dakota Century Code Section 54-14-03.1 requires the Executive Budget Office to submit a written report to the Budget Section documenting irregularities, discovered during the preaudit of claims, and areas where more uniform and improved fiscal practices are desirable. The definition of irregularities includes payments of bonuses, cash incentive awards, and temporary salary adjustments to state employees.
8. North Dakota Century Code Section 54-16-01 allows Emergency Commission transfers from the state contingency fund in excess of \$500,000 only to the extent the requests for transfers are approved by the Budget Section.
9. North Dakota Century Code Section 54-27-22 requires Budget Section approval of state agency and institution requests for moneys from the capital improvements preliminary planning revolving fund. House Bill No. 1004 (1989) transferred the July 1, 1989, preliminary planning revolving fund balance of \$108,411 to the general fund.
10. North Dakota Century Code Section 54-27-23 relates to cash flow financing and provides that evidences of indebtedness may not be issued to offset projected deficits in state finances unless approved by the Budget Section. The Budget Section may approve additional cash flow financing of up to 80 percent of estimated general fund revenues relating to sales or production occurring prior to June 30, to be collected in July or August after the end of the biennium. If a revenue shortfall of more than five percent occurs, the Office of Management and Budget must order budget allotments prior to approval by the Budget Section of additional cash flow financing. All borrowing must be repaid by the end of the biennium.
11. North Dakota Century Code Section 54-44.1-07 provides that the Legislative Council is to prescribe the form that budget data, prepared by the director of the budget, is presented to the Legislative Assembly. The Legislative Council assigned this responsibility to the Budget Section.
12. North Dakota Century Code Section 54-44.1-13.1 provides that, subject to Budget Section approval, the director of the budget is to reduce state agency and institution budgets by a percentage sufficient to cover the estimated losses caused by initiative or referendum action.
13. North Dakota Century Code Section 57-01-11.1 requires the Tax Commissioner to submit

quarterly reports to the Budget Section on the progress made in collecting additional tax revenues under the enhanced audit program and on settlements of tax assessments.

14. Chapter 49 of the 1987 Session Laws provides legislative intent that the Adjutant General obtain Budget Section approval prior to vacating any armories during the 1987-89 biennium.
15. Chapter 52 of the 1987 Session Laws requires the approval of the Budget Section and the Governor prior to the sale, lease, exchange, or transfer of the San Haven properties by the Director of Institutions.
16. House Bill No. 1001 (1989) requires the Attorney General to report to the Budget Section any deficiency appropriation to be introduced to the 1991 Legislative Assembly to reimburse the state bonding fund for the purpose of providing defense services to eligible state employees.
17. House Bill No. 1004 (1989) provides that in the event state general fund projections indicate a negative ending balance for the 1989-91 biennium, the director of the budget, subject to Budget Section approval, is required to proportionately reduce the appropriations of the entities listed below as identified in the bill, up to the amounts shown:

Superintendent of Public Instruction, not including the Schools for Blind and Deaf or the Division of Independent Study	\$ 4,660,000
Board of Higher Education, including the institutions and offices under its control, except for the Agricultural Experiment Station and NDSU Extension Service	6,680,000
Department of Human Services	3,110,000
Payments to political subdivisions from the state aid distribution fund	2,150,000
Judicial branch	490,000
Legislative branch	170,000
Other	2,740,000
Total	\$20,000,000

18. House Bill No. 1011 (1989) provides legislative intent that the Adjutant General obtain Budget Section approval prior to vacating any National Guard armories during the 1989-91 biennium; however, if the city in which the armory is located does not object to the armory being vacated, the Adjutant General may vacate the armory without the approval of the Budget Section.
19. House Bill No. 1200 (1989) provides an appropriation of any federal, private, and other funds that may become available to the Agricultural Products Utilization Commission for research, marketing, and utilization grants for

the 1989-91 biennium. Expenditure of the funds is subject to Budget Section approval.

20. Senate Bill No. 2005 (1989) provides an appropriation of up to \$1 million in gifts for the construction of a research and extension service staff facility at the Main Research Station or a branch center. Expenditure of the funds is subject to Budget Section approval.
21. Senate Bill No. 2405 (1989) provides an appropriation of private funds that may become available to the University of North Dakota to expand the Oxford House. Expenditure of the funds is subject to approval by the Budget Section, State Board of Higher Education, and State Historical Board.
22. Senate Bill No. 2538 (1989) requires that the Department of Human Services periodically report to the Budget Section its progress in developing and expanding community programs, expanding outreach in rural areas, reducing the average daily census at the State Hospital, and addressing deficiencies identified by the accreditation and certification entities.
23. Senate Bill No. 2538 (1989) directs the Legislative Council to conduct a study during the 1989-90 interim of the appropriation process. The study is to include consideration of recommendations for appropriate reference in appropriation bills to programs, departments, agencies, institutions, and activities.
24. House Concurrent Resolution No. 3028 (1989) authorizes the Budget Section to hold the required legislative hearings for federal block grants under the Omnibus Budget Reconciliation Act of 1981. The Budget Section authority is in effect through September 30, 1991.
25. Senate Concurrent Resolution No. 4047 encourages the 1989 interim Budget Committee on Long-Term Care, which is assigned the study of the state's system of delivering various human service programs, to share its findings and recommendations with the Budget Section.
26. Pursuant to a Legislative Council directive, the Budget Section is to review and report on the budget data prepared by the director of the budget and presented to the Legislative Assembly during the 1990 organizational session.

Budget Section members were Senators Harvey D. Tallackson (Chairman), William S. Heigaard, Evan E. Lips, Rick Maixner, Corliss Mushik, Pete Naaden, Gary J. Nelson, John M. Olson, Rolland W. Redlin, Bryce Streibel, Floyd Stromme, Russell T. Thane, Art Todd, Jerry Waldera, Dan Wogsland, and James C. Yockim; Representatives Ronald A. Anderson, Jack Dalrymple, Gereld F. Gerntholz, Jayson Graba, Ronald E. Gunsch, Orlin M. Hanson, Roy Hausauer, Serenus Hoffner, Roxanne Jensen, Tish Kelly, Harley Kingsbury, Richard Kloubec, William E. Kretschmar, Bruce Laughlin, Charles F. Mertens, Robert E. Nowatzki, Bob O'Shea, Douglas G. Payne, Jim Peterson, John Schneider, Beth Smette, R. L. Solberg, Bill Sorensen, Scott B. Stofferahn, Kenneth N. Thompson, Francis J. Wald, and Gene Watne; and Lt. Governor Lloyd Omdahl. Senator Clark Ewen, prior to his death in September 1990, and Senator

R. V. Shea, prior to his death in March 1990, were members of the Budget Section.

The report of the Budget Section was submitted to the Legislative Council at the biennial meeting of the Council in November 1990. The report was adopted for submission to the 52nd Legislative Assembly.

The Budget Section was not required to hold public block grant hearings since the state did not receive, in addition to the moneys appropriated by the Legislative Assembly for the 1989-91 biennium, federal block grant moneys under the Omnibus Budget Reconciliation Act of 1981.

The Budget Section did not receive requests or reports:

1. To receive applications for natural resources development bond issues.
2. From the Department of Human Services to terminate the food stamp or energy assistance programs as a result of a decrease in the rate of federal financial participation.
3. From the Executive Budget Office regarding irregularities discovered during the preaudit of claims or any areas where more uniform and improved fiscal practices are desirable.
4. From state agencies or institutions for moneys from the capital improvements preliminary planning revolving fund.
5. To approve cash flow financing to offset projected state financial deficits.
6. From the Director of Institutions for approval regarding the sale, lease, exchange, or transfer of the San Haven properties.
7. From the Attorney General of any deficiency appropriation to be introduced to the 1991 Legislative Assembly to reimburse the state bonding fund.
8. From the Agricultural Products Utilization Commission to approve expenditure of federal, private, or other funds for research, marketing, and utilization grants.
9. From the Main Research Station or branch center to approve expenditure of funds for construction of a research and extension service staff facility.
10. From the University of North Dakota to approve the expenditure of private funds to expand the Oxford House.

STATUS OF THE STATE GENERAL FUND

At each Budget Section meeting a representative of the Office of Management and Budget reviewed the status of the state general fund and revenue collections.

General Fund Balance

The following is a summary of the status of the state general fund for the 1989-91 biennium:

Unobligated general fund balance - July 1, 1989	\$ 40,000,000
1989-91 revised revenue estimate	1,080,520,000
Total funds available	<u>\$1,120,520,000</u>
1989-91 revised appropriations	1,051,860,000
Estimated remaining balance	\$ 68,660,000
Estimated transfer to the budget stabilization fund	<u>28,660,000</u>
June 30, 1991, estimated unobligated general fund balance	<u>\$ 40,000,000*</u>

*The projected funding available from the June 30, 1991, general fund balance of \$40 million and the June 30, 1991, budget stabilization fund balance of \$51 million after the \$28,660,000 transfer listed above is \$91 million.

Revenue Revisions

Because of the defeat of the sales tax and individual income tax measures on the December 1989 special election ballot, original general fund revenue projections were decreased by \$110 million which resulted in general fund agency budgets being reduced by a total of \$95.8 million. The budget reductions were less than the revenue loss due to the \$2.15 million transfer to the general fund from aid to political subdivisions and the use of the projected \$12 million June 30, 1991, ending general fund balance. A revised revenue forecast was received in August 1990, which included actual collections through June 1990. The revised forecast projected general fund revenues of approximately \$93 million more than the estimated revenues adjusted for the effect of the December 1989 referrals. As a result of the increased revenue projection, the Governor, in August 1990, unallotted two percent (\$22 million) of the previous December 1989 8.5 percent budget reductions. The following schedule compares the original 1989-91 revenue estimates adopted by the 1989 Legislative Assembly to the August 1990 revised estimates:

<u>Revenue Type</u>	<u>Original Estimate</u>	<u>Revised Estimate</u>	<u>Variance</u>
Sales and use taxes	\$ 495,479,900	\$ 457,838,632	\$(37,641,268)
Individual income tax	243,370,000	224,144,279	(19,225,721)
Corporate income tax	62,855,000	82,286,001	19,431,001
Cigarette and tobacco tax	29,095,000	28,838,875	(256,125)
Oil and gas production tax	33,797,000	39,727,906	5,930,906
Oil extraction tax	47,952,000	53,423,967	5,471,967
Coal severance tax	21,544,000	22,138,045	594,045
Coal conversion tax	18,270,000	18,683,001	413,001
Insurance premium tax	32,246,000	32,407,978	161,978
Interest income	18,664,000	23,826,430	5,162,430
Other	<u>88,046,500</u>	<u>97,203,654</u> ¹	<u>9,157,154</u>
Total general fund revenues	<u>\$1,091,319,400</u>	<u>\$1,080,518,768</u>	<u>\$(10,800,632)</u>

¹ Includes transfers of \$5,967,192 from the budget stabilization fund.

1989-91 APPROPRIATION ADJUSTMENTS Referendum Appropriation Reductions

North Dakota Century Code (NDCC) Section 54-44.1-13.1 requires the director of the budget, subject to Budget Section approval, to reduce state agency and institution budgets by a percentage sufficient to cover the estimated revenue loss caused by an initiative or referendum action. In accordance with this section, the Budget Section was requested to approve the Office of Management and Budget's proposed allotments caused by the loss of sales tax revenue, individual income tax revenue, and gas tax revenue due to the referral of the sales tax, individual income tax, and gas tax measures on the December 5, 1989, special election ballot. The Office of Management and Budget's proposal called for general fund budget reductions of \$95,763,770, payments to political subdivisions reduction of \$2,150,000, and highway fund budget reductions of \$12,726,540. House Bill No. 1004 (1989) identified the first \$20 million of general fund budget reductions as follows:

Department of Public Instruction	\$ 4,660,000
Higher Education	6,680,000
Department of Human Services	3,110,000
Payments to political subdivisions	2,150,000
Judicial branch	490,000
Legislative branch	170,000
Other	<u>2,740,000</u>
Total	<u>\$20,000,000</u>

The Office of Management and Budget proposed that the other category identified above and the remaining \$75,763,770 of general fund reductions reduce agency budgets funded from the general fund uniformly across the board. In addition, the Office of Management and Budget proposed that the highway fund budget reductions also be uniform across the board for all agencies funded from the highway fund.

The Budget Section approved the Office of Management and Budget's proposed allotments.

Budget Stabilization Fund

The Budget Section reviewed statutory provisions relating to the budget stabilization fund (NDCC Chapter 54-27.2). The Budget Section expressed concern regarding the transfers and expenditures from the budget stabilization fund after reductions of appropriation authority have been made.

The law provides that any amount in the state general fund in excess of \$40 million at the end of a biennium is deposited into the budget stabilization fund. The Governor may order transfers from the budget stabilization fund if the director of the Office of Management and Budget projects that general fund revenues for the biennium will be at least five percent less than estimated by the most recently adjourned special or regular session of the Legislative Assembly. However, the law also provides that the amount transferred upon order of the Governor may not exceed the difference between an amount five percent less than the original general fund revenue projections for the biennium and the general fund revenue projections for the biennium made by the director of the Office of Management and Budget. The amount transferred may be expended only within the limits of legislative guidelines and general fund appropriations of the most recently adjourned Legislative Assembly.

Because the June 30, 1989, general fund balance was \$65.25 million, \$25.25 million was transferred to the budget stabilization fund. The Budget Section questioned whether the Governor could order transfers from the budget stabilization fund after the Budget Section approved the budget allotments proposed by the Office of Management and Budget. The Budget Section also questioned how the funds could be used by the agencies if the Governor is authorized to make transfers. The Budget Section requested an Attorney General's opinion regarding these areas. The Attorney General's opinion concluded that the Governor could release funds from the budget stabilization fund after budget allotments have been approved by the Budget Section and that those funds could be spent by an agency within the limits of the legislative appropriation for that agency but in excess of the funds available to that agency after the budget reductions. In addition, the opinion stated that the funds transferred at the request of the Governor from the budget stabilization fund need not

be allocated to all affected agencies on a uniform basis.

The Governor ordered the following transfers from the budget stabilization fund during the 1989-91 biennium for use by the agencies listed:

Department of Human Services	\$4,599,892
Tax Department	797,096
State Auditor	190,000
Director of Institutions	112,120
Attorney General	92,000
School for the Blind	50,000
School for the Deaf	50,000
Department of Corrections and Rehabilitation	44,000
Emergency Commission	<u>32,084</u>
Total	<u>\$5,967,192</u>

The balance in the budget stabilization fund on June 30, 1991, is projected to be \$50,958,673. This amount includes the \$25,246,378 transfer to the fund from the excess June 30, 1989, general fund balance, the effect of the \$5,967,192 of transfers from the fund listed above, projected 1989-91 interest income of \$3,019,487, and the projected transfer to the fund of \$28,660,000 from the excess June 30, 1991, general fund balance.

ALTERNATIVE REVENUE PROJECTIONS

In the past when revenue projections have been presented to the Legislative Assembly, there have been no alternative revenue levels to the revenue projections included in the executive budget. The Budget Section, in order to have additional revenue information available to the Legislative Assembly, asked for options to executive budget 1991-93 revenue estimates to be presented to the organizational session of the 1991 Legislative Assembly.

The Budget Section reviewed the history of the North Dakota revenue projection process and the current revenue projection process. The current process occurs as follows:

1. The Tax Department provides statistical data to Wharton Econometric Forecasting Associates.
2. Wharton Econometric Forecasting Associates generates North Dakota's revenue forecast by incorporating the information provided by the Tax Department and other economic information in its North Dakota Tax Model. Wharton Econometric Forecasting Associates provides its revenue forecast for the next biennium in February of each year prior to the legislative session with updates in June, October, and in February during the legislative session.
3. Wharton Econometric Forecasting Associates' projections are forwarded to the Tax Department and the Office of Management and Budget. The Tax Department, from the revenue projections, calculates tax collections for the various tax types based on North Dakota's tax laws.
4. The Office of Management and Budget uses the Wharton Econometric Forecasting Associates' information and the Tax Department estimates

to formulate the Governor's executive budget recommendations.

The Budget Section heard a proposal from the North Dakota State University Department of Agricultural Economics on what it could provide in terms of alternative options for 1991-93 revenue estimates. The Budget Section was informed that although North Dakota State University was willing to provide information on alternative revenue levels, the information provided by North Dakota State University would not be comparable to Wharton Econometric Forecasting Associates; therefore, additional work would be required of the Tax Department to calculate tax collections based on North Dakota State University's estimates.

The Budget Section heard a report from the Office of Management and Budget on a proposal for involving Wharton Econometric Forecasting Associates in alternative revenue projections for the 1991-93 biennium. The Office of Management and Budget's proposal included revenue alternatives for high oil prices, low oil prices, and a 10 percent change in gross farm income.

The Budget Section requested, in accordance with NDCC Section 54-44.1-07, that the Office of Management and Budget present alternative revenue projections for the 1991-93 biennium to the 1991 Legislative Assembly at the organizational session and that the alternatives include the effect on the executive budget revenue forecast of:

1. High oil prices (approximately \$10 per barrel more than Wharton Econometric Forecasting Associates' "most likely" estimate).
2. Low oil prices (approximately \$5 per barrel less than Wharton Econometric Forecasting Associates' "most likely" estimate).
3. A 10 percent change in gross farm income.

ENHANCED AUDIT PROGRAM

In accordance with NDCC Section 57-01-11.1, which requires the State Tax Commissioner to submit quarterly reports to the Budget Section of the progress made in collecting additional taxes under the auditing enhancement program and settlements of tax assessments, the State Tax Commissioner reported at each Budget Section meeting on the enhanced audit program collections and on assessments and settlements.

The enhanced audit program was established in 1983 and allowed the Tax Department to hire additional auditors to collect more effectively taxes due to the state. For the period July 1, 1989, through September 30, 1990, the Tax Department reported enhanced audit program collections of \$8.34 million, \$2.21 million more than the goal for the same period of \$6.13 million.

APPROPRIATION PROCESS STUDY

Senate Bill No. 2538, approved by the 1989 Legislative Assembly, directs the Legislative Council to study the appropriation process, including consideration of recommendations for appropriate reference in appropriation bills to programs, departments, agencies, institutions, and activities.

Background

Questions arose during the 1989 legislative session about how appropriation bills should be prepared in the future in light of the numerous agency and institution consolidations approved by the 1989 Legislative Assembly. Concern was raised regarding the extent to which programs, departments, agencies, institutions, and activities should be identified and segregated in appropriation bills. The Legislative Council is authorized in NDCC Section 54-44.1-07 to prescribe the form in which the director of the budget is to present budget data to the Legislative Assembly.

The North Dakota Legislative Assembly has historically appropriated funds to individual operating units of government created by the constitution or by statute (agency or institution such as the Public Service Commission or the State Hospital). Funds have been appropriated to each agency or institution by object (salaries and wages, operating expenses, equipment, capital improvements, etc.). Because of significant government reorganization and consolidation of individual agencies and institutions established by the constitution or by statute into major departments during the 1989 legislative session, funds for the 1989-91 biennium were appropriated for a number of individual agencies or institutions in one major department appropriation with no reference to individual agencies or institutions.

The following agency and institution consolidations were approved by the 1989 Legislative Assembly:

1. Department of Human Services - Department of Human Services, Grafton State School, and State Hospital.
2. Department of Transportation - Highway Department and Motor Vehicle Department.
3. Department of Corrections and Rehabilitation - State Penitentiary, Roughrider Industries, State Industrial School, Parole and Probation Office, and Juvenile Services.
4. Retirement and Investment Office - State Investment Board and Teachers' Fund for Retirement.
5. Superintendent of Public Instruction - Superintendent of Public Instruction, Independent Study, State Library*, School for the Deaf*, and School for the Blind*.
6. Industrial Commission - Industrial Commission and Geological Survey.
7. Governor's Office - Governor's Office, Protection and Advocacy, and Governor's Council on Human Resources.
8. Land Department - Land Department and Energy Development Impact Office.

*The State Library, School for the Deaf, and School for the Blind are administratively under the Superintendent of Public Instruction; however, each will continue to submit a separate budget.

Findings

The Budget Section reviewed other states' methods of appropriating funds to consolidated departments and found that those states appropriate

funds separately to major programs and agencies within consolidated departments. In addition, the Budget Section learned that, according to a survey conducted by the National Conference of State Legislatures, 40 states require legislative approval prior to executive branch agencies transferring funds between programs within major departments.

The Budget Section questioned the Legislative Assembly's responsibility to fund institutions and offices identified in the state constitution. The Budget Section found that, according to a Legislative Council staff report, a question of constitutionality could be raised when appropriations are not made to institutions and offices referred to in the constitution. The Legislative Assembly, by appropriating funds to a major consolidated department such as the 1989-91 appropriation to the Department of Human Services, did not directly make appropriations to the State Hospital or the State Developmental Center, which are named in the constitution.

The Budget Section expressed interest in including more legislative intent language in appropriation bills to more clearly communicate the intent of the Legislative Assembly. The Budget Section reviewed the use of legislative intent language in Minnesota and North Dakota appropriation bills. The Budget Section found that although legislative intent language appears in different documents in North Dakota, as compared to Minnesota, the intent the areas referred to in legislative intent are similar between the two states.

The Budget Section questioned the amount of flexibility it has to set salary levels of the employees of the institutions of higher education. A Legislative Council staff report concluded that an attempt by the Legislative Assembly to place conditions on an appropriation setting or limiting salary increases of higher education personnel, if challenged, may be found to be an unconstitutional infringement on the board's constitutional authority.

The Budget Section received testimony from the Office of Management and Budget, Department of Corrections and Rehabilitation, Department of Human Services, and Board of Higher Education office regarding North Dakota's appropriation process and the content of appropriation bills. The agency representatives from the Office of Management and Budget, Department of Corrections and Rehabilitation, and Department of Human Services asked the Budget Section to continue the appropriation process of the current biennium in which funding is provided for an entire consolidated department within one appropriation subsection (unitary budget).

Recommendation

Because of the number of agency and institution consolidations during the 1989 legislative session, and because appropriations made to consolidated departments for the 1989-91 biennium did not identify major institutions and agencies named in the state constitution or in statute, the Budget Section, in accordance with NDCC Section 54-44.1-07, recommends that the Office of Management and Budget, when preparing the executive budget recommendations and appropriation bills for major consolidated

departments (the Department of Human Services, the Department of Corrections and Rehabilitation, and Department of Transportation, etc.), include in separate subdivisions appropriations to each institution and major program under the consolidated department's control and that legislative intent be written into appropriation bills providing guidance for expenditures relating to salaries and wages, program changes, etc.

Examples of appropriation bills prepared in accordance with the Budget Section recommendation for the Department of Human Services and Department of Corrections and Rehabilitation include the following separate appropriation subdivisions, each with the traditional object line items (salaries and wages, operating expenses, etc.) and a transfer section which allows the department to transfer appropriation authority between the subdivisions of the appropriation bill upon approval of the Budget Section:

Department of Human Services

- Central office
- Family support programs
- Health care programs
- Regional centers
- State Hospital
- State Developmental Center

Department of Corrections and Rehabilitation

- Central office
- State Penitentiary
- Roughrider Industries
- State Industrial School
- Parole and Probation
- Juvenile Services
- Pardon Board

ARC LAWSUIT

In order to assist in bringing to a close the Association for Retarded Citizens lawsuit, Legislative Council Chairman Representative Charles F. Mertens asked the Budget Section to monitor the status of the state's progress in providing services mandated by the lawsuit and to provide background information on the lawsuit to assist the 1991 Legislative Assembly in resolving the remaining issues in order to have the state released from the lawsuit.

Background

On September 26, 1980, the Association for Retarded Citizens initiated a lawsuit in the United States District Court against the state of North Dakota challenging conditions of confinement at the Grafton State School, including the San Haven facility. On August 31, 1982, the district court found the state in violation of federal and state constitutional and statutory rights. The court issued an implementation order for deinstitutionalization and appointed a court monitor to report on the services provided by the state.

Findings

Budget Section tour groups, along with the Budget Committee on Human Services and Budget Committee on Government Finance, visited, as part of their

budget tours, facilities involved in the Association for Retarded Citizens lawsuit. Please refer to the tour group information presented later in the Budget Section report and the reports of the Budget Committee on Human Services and Budget Committee on Government Finance regarding the facilities visited and the tour group findings.

The Budget Section heard reports on the status of the Association for Retarded Citizens lawsuit from the Attorney General's office, Department of Human Services including the Developmental Disabilities Division and the State Developmental Center, the Protection and Advocacy Project, Governor's office, Department of Health and Consolidated Laboratories, Director of Institutions' office, Association for Retarded Citizens, Department of Public Instruction, and the Board for Vocational Education.

The Budget Section learned from the reports received that the court issued a memorandum and order in March 1990 providing that the lawsuit will be dismissed if the state continues its progress in all areas and implements the following:

1. The state fund at least seven new positions within the Protection and Advocacy Project by July 1, 1990.
2. The state permanently comply with Title XIX regulations and all Accrediting Council for Persons with Developmental Disabilities standards in all its facilities and programs.
3. The state, before November 30, 1990, hire the Accrediting Council for Persons with Developmental Disabilities to conduct an evaluation of the services furnished to class members.

After the March 1990 order was issued, the state asked the district court to reconsider its order; however, the court denied the state's request. Thereafter, the state sought and received from the Eighth Circuit Court of Appeals a stay of the order. It cannot currently be determined whether or not the decision of the court of appeals will be rendered before the 1991 Legislative Assembly concludes its session.

FEDERAL FUNDS

The Budget Section heard a Legislative Council staff report on the status of 1989-91 federal funds available to North Dakota state government. The Budget Section was informed that \$945,192,365 of federal funds was appropriated by the 1989 Legislative Assembly. This amount includes \$5,994,175 of 1989-91 Emergency Commission approvals. The report indicated that based on actual federal funds received for the first nine months of the biennium, and estimates for the remainder of the biennium, North Dakota will receive an estimated \$902,697,977 of federal funds, \$42,494,388 less than was appropriated by the 1989 Legislative Assembly and approved by the Emergency Commission. The agencies affected most are the Department of Transportation, which is estimated to receive \$22 million less, and the Southwest Water Pipeline Project, which is estimated to receive \$16 million less.

**STATE BOARD OF HIGHER EDUCATION
Tuition Rates**

In accordance with North Dakota Century Code Section 15-10-18, the Budget Section approved the 1989-90 and 1990-91 nonresident tuition rates as proposed by the Board of Higher Education.

North Dakota nonresident tuition rates vary depending on where a nonresident student is from. Students from Minnesota and other contiguous states and provinces do not pay as much for tuition as other nonresident students do.

Nonresident students not from Minnesota or another contiguous state or provinces pay 267 percent of the North Dakota resident tuition rate.

Students from South Dakota, Montana, Sas-

katchewan, and Manitoba pay, at North Dakota State University and the University of North Dakota, 150 percent of the North Dakota resident tuition rate. At North Dakota's four-year regional universities and two-year institutions, these students pay the same rate as Minnesota students pay which is 125 percent of the resident tuition rate.

Because North Dakota has a reciprocity agreement with Minnesota, the Budget Section does not approve nonresident tuition rates for Minnesota students. Under the agreement, Minnesota students pay 125 percent of the North Dakota resident tuition rate.

The approved nonresident tuition rates, including the 1988-89 previously approved rates are:

	Undergraduate			Graduate		
	1988-89	1989-90	1990-91	1988-89	1989-90	1990-91
University of North Dakota North Dakota State University						
Minnesota students	\$1,536	\$1,890	\$2,262	\$1,546	\$1,950	\$2,322
South Dakota, Montana, Saskatchewan, and Manitoba students	1,902	2,262	2,712	2,136	2,574	3,024
Other nonresident students	3,138	3,768	4,824	3,660	4,290	5,382
Four-year Regional Universities						
Minnesota students	1,240	1,410	1,758	1,546	1,950	2,322
South Dakota, Montana, Saskatchewan, and Manitoba students	1,240	1,410	1,758	1,546	1,950	2,322
Other nonresident students	2,802	2,952	3,954	3,243	3,873	5,382
Two-year Institutions and Branches						
Minnesota students	1,193	1,326	1,674	N/A	N/A	N/A
South Dakota, Montana, Saskatchewan, and Manitoba students	1,193	1,326	1,674	N/A	N/A	N/A
Other nonresident students	2,802	2,880	3,876	N/A	N/A	N/A

**ADJUTANT GENERAL
Armories**

Pursuant to 1989 House Bill No. 1011, the Adjutant General requested Budget Section approval to vacate the National Guard's armories at Cavalier, Hillsboro, and Mandan. The National Guard has 27 armories that require rental payments and three for which no rent is paid. The National Guard's 1989-91 appropriation includes \$532,531 for rental payments which is \$66,000 less than the actual rental payments due during the 1989-91 biennium. The Budget Section did not approve the Adjutant General's request. The Adjutant General indicated that because the request was denied the \$66,000 shortfall will be prorated against all armory rentals in the state.

Budget

The Budget Section heard a report from the Adjutant General regarding its 1991-93 budget. The Budget Section learned that the National Guard will request an additional \$1,729,349 for the 1991-93 biennium from the state general fund to replace decreased funding available from the National Guard tuition trust fund. The 1989-91 legislative appropriation for the National Guard was \$11,854,956, of which \$3,053,507 was from the general fund, \$2,634,349 from the National Guard tuition trust

fund, and \$6,167,100 of federal funds for the 1991-93 biennium. The National Guard is requesting an appropriation of \$14,171,953, of which \$5,725,069 is from the state general fund, \$905,000 is from the National Guard tuition trust fund, and \$7,541,884 is from federal and other funds.

OIL TAX COLLECTIONS

The Budget Section monitored the status of the state's oil tax collections during the 1989-91 biennium. Oil prices and production averaged slightly more than projections for the first year of the biennium. Early in the second year of the biennium, prices increased sharply due to the Middle East crisis. The October 31, 1990, posted oil price was \$32.90 per barrel, \$15.93 more than the August 1990 projection of \$16.97.

The August 1990 revised general fund revenue projections were based on average oil prices of \$16.74 per barrel for the remainder of the 1989-91 biennium. After the Middle East crisis, Wharton Econometric Forecasting Associates provided updated oil price projections which estimate an average oil price of \$25 per barrel for fiscal year 1991 (July, August, and September - \$23.50; October, November, and December - \$27.50; January, February, and March - \$25.00; April, May, and June - \$23.00), which would generate

approximately \$20 million of additional general fund revenue for the 1989-91 biennium.

TOUR GROUPS

Budget Section members, along with the Budget Committee on Government Finance and the Budget Committee on Human Services, conducted budget tours during the 1989-91 biennium.

The tour group minutes are available in the Legislative Council office and will be submitted to the Appropriations Committees during the 1991 legislative session.

The Budget Section toured the State Farm in Bismarck.

The Budget Section's northeastern tour group, Senator Corliss Mushik, Chairman, visited the following state institutions:

- State Developmental Center
- School for the Blind
- Northeast Human Service Center
- University of North Dakota
- UND-Medical School Rehabilitation Hospital
- UND-Medical School
- North Dakota Mill and Elevator
- Mayville State University
- Grand Forks Mission

The Budget Section's southeastern tour group, Representative Charles F. Mertens, Chairman, visited the following state institutions:

- Valley City State University
- Veterans Home
- North Dakota State College of Science
- Division of Independent Study
- North Dakota State University
- Main Research Station
- Northern Crops Institute
- Southeast Human Service Center
- CENTRE, Inc.
- Psychosocial Rehabilitation Center
- Share House

The Budget Section's western tour group, Representative Kenneth N. Thompson, Chairman, visited the following state institutions:

- Bismarck State College
- Manchester House
- Pride Industries
- State Penitentiary
- State Industrial School
- Southwest Water Pipeline Pumping Station
- State Addition Property
- Dickinson Research Center
- Dickinson Transitional Living Center
- Prairie Rose Activity Center
- Southwest Multicounty Correction Center
- Badlands Human Service Center
- Dickinson State University

The Budget Committee on Government Finance, Representative Roy Hausauer, Chairman, con-

stituted the budget tour group for the following state institutions:

- Fort Totten
- School for the Deaf
- UND-Lake Region
- Camp Grafton
- Towner State Nursery
- San Haven
- International Peace Garden
- State Forested Recreation Site
- NDSU-Bottineau
- Forest Service
- State Fair facilities
- Minot State University
- North Central Research Center

The Budget Committee on Human Services, Representative Tish Kelly, Chairman, constituted the budget tour group for the following state institutions:

- State Hospital
- Alpha Opportunities
- UND-Williston
- Northwest Human Service Center
- Hilman House
- Mercy Recovery Center
- Tri-City Care
- University Children's Center
- Ruth Meiers Adolescent Center
- Agassiz Enterprises Vocational Rehabilitation Center
- Friendship Place Social Club
- LISTEN Drop-In Center
- Williston Research Center

The Budget Section adopted the tour group reports and although the Budget Section did not take action in regard to the tour group recommendations, it asked that the recommendations and observations listed below be presented to the Legislative Assembly for informational purposes.

1. The staff of the State Developmental Center at Grafton be commended for the innovation and creative use of available facilities and the development of agreements with local public agencies for the use of those facilities.
2. The 1991 Legislative Assembly support a Department of Human Services' request for additional housing for the seriously mentally ill and chemically dependent, if funding is available.
3. The 1991 Legislative Assembly support the request of the University of North Dakota for additional funding for disabled students at the University of North Dakota in the amount of \$293,866.
4. The 1991 Legislative Assembly support the funding, within funding limitations, of the handicapped accessibility projects at the institutions of higher education.
5. The 1991 Legislative Assembly support the following capital improvement requests of Valley City State University:

Special assessments	\$40,000
Classroom and office renovation	40,086
Handicapped accessibility projects	45,000
Roof replacement on McFarland Hall	65,000
Campus communications networking	19,530
Energy conservation projects	96,800
Total	\$306,416

6. The 1991 Legislative Assembly support the Veterans Home request to increase resident salaries by \$1 per hour, from \$1 to \$2 per hour, at a cost of \$70,968 for the 1991-93 biennium, and if additional funding is available, to consider increasing resident salaries to the minimum wage.
7. The 1991 Legislative Assembly take into account, when considering the North Dakota State College of Science's 1991-93 budget request for equipment, that the 1989 Legislative Assembly appropriated an additional \$500,000 for equipment at the North Dakota State College of Science; however, the North Dakota State College of Science chose to reduce its equipment appropriation by \$200,000 to fund physical plant operating expenses and by approximately \$150,000 as a result of budget reductions and other adjustments due to the August 1990 unallotment.
8. The Southeast Human Service Center be complimented on the seriously mentally ill/developmental disability program and the 1991 Legislative Assembly support the Southeast Human Service Center's 1991-93 budget request for the program.
9. The Budget Section be aware of the tour group's concern regarding the soundness of the San Haven buildings and the liability of the state at San Haven.
10. The Southwest Water Pipeline Project be commended for the exemplary job it is doing in bringing water to the residents of southwestern North Dakota and that the Budget Section be reminded of the importance of water to the state and direct its attention to establishing similar programs in other areas of the state where water is needed (i.e., Devils Lake, Red River Valley).

OTHER ACTION

North Dakota Century Code Section 54-16-01 provides that transfers from the state contingency

fund in excess of \$500,000 be approved by the Budget Section. In accordance with this section, the Budget Section approved the Emergency Commission's request to spend the remaining \$211,000 of the 1987-89 revised state contingency fund appropriation of \$683,940. The funds will be used to repay a portion of the loan from the Bank of North Dakota which was used to match federal funds under the Robert T. Stafford Disaster Emergency Assistance Act for flood relief in the Red River Valley in 1989.

In accordance with NDCC Section 15-10-12.1, the Budget Section approved the University of North Dakota's request to spend \$8.1 million of federal funds for the construction of an earth systems science building at the University of North Dakota.

The Budget Section heard a report, pursuant to 1989 Senate Bill No. 2538, on the Department of Human Services' progress in developing and expanding community programs, expanding outreach in rural areas, reducing the average daily census at the State Hospital and addressing deficiencies identified by the accreditation and certification entities. The bill appropriated \$5,871,138 of other funds to the department to address these areas. The report indicated that the department has reduced the State Hospital's population from 427 during the 1987-89 biennium to approximately 300 in the second year of the 1989-91 biennium due to increased services available in the community for the mentally ill and chemically dependent. For the 1991-93 biennium, the department reported that it plans to shift \$1.5 million and 33 positions from the State Hospital to the regional human service centers.

The Budget Section heard a report, pursuant to 1989 Senate Concurrent Resolution No. 4047, regarding the Budget Committee on Long-Term Care's findings and recommendations relating to the implementation of the Family Support Act and the Medicare Catastrophic Coverage Act. Please refer to the Budget Committee on Long-Term Care's report regarding its findings and recommendations.

The Budget Section heard reports from the Board of Higher Education on possible changes to student loan programs available to North Dakota higher education students, on salary increases given to higher education faculty and higher education staff, and on the reasons higher education program reductions were made when postreferral higher education general fund appropriations were more than 1987-89 revised general fund appropriations.

This report presents Budget Section activities during the interim. Since one of the major responsibilities of the Budget Section is to review the executive budget, which by law is not presented to the Legislative Assembly until after December 1, a supplement to this report will be submitted for distribution at a later date.

BUDGET COMMITTEE ON GOVERNMENT ADMINISTRATION

The Budget Committee on Government Administration was assigned three studies. House Concurrent Resolution No. 3033 directed the committee to evaluate the adequacy of the state's elected officials' compensation. House Concurrent Resolution No. 3062 directed a study of the state payment of occupation and professional licenses. House Concurrent Resolution No. 3083 directed a study of the adequacy of property insurance coverage on state-owned buildings. In addition, as provided in 1989 House Bill No. 1035, the committee received reports on the implementation of pay equity.

Committee members were Representatives Richard Kloubec (Chairman), Lynn W. Aas, Patricia DeMers, Jayson Graba, Alvin Hausauer, Kevin Kolbo, Grant H. Shaft, W. C. Skjerven, Steven W. Tomac, Francis J. Wald, Janet Wentz, and Joe Whalen and Senators Ray David, Layton W. Freborg, Evan E. Lips, Jim Maxson, and Floyd Stromme. Representative Gerald A. Halmrast was a member of the committee prior to his death in September 1990.

The report of the committee was submitted to the Legislative Council at the biennial meeting of the Council in November 1990. The report was adopted for submission to the 52nd Legislative Assembly.

ELECTED OFFICIALS' COMPENSATION - COURT UNIFICATION

Background

House Concurrent Resolution No. 3033 directed the Legislative Council to study and evaluate the adequacy of compensation to justices of the Supreme Court and judges of the district courts, legislators, and other elected officials. The Legislative Council, by directive, added county court judges to this study because the 1989 Legislative Assembly froze the minimum salary of a county court judge at a level equal to 85 percent of the January 1, 1989, salary of a district court judge (\$55,519 x .85 = \$47,191).

The Legislative Assembly approved this study because it is believed that inadequate compensation levels may contribute to the decision of a qualified candidate not to run for a state office or to the decision of some elected state officials to leave state service.

Findings

Elected Officials' Compensation

The salary levels of those elected officials studied for the 1987-89 and 1989-91 bienniums are as follows:

Elected Official	Authorized by 1985 and 1987 Legislative Assemblies Statutory Annual Salary	Authorized by 1989 Legislative Assembly Statutory Annual Salary
Governor	\$ 60,862	\$ 65,200
Lt. Governor	50,000	53,500
Secretary of State	46,000	49,300
Attorney General	52,000	55,700
Superintendent of Public Instruction	47,000	50,300
Tax Commissioner	46,000	49,300
Insurance Commissioner	46,000	49,300
Public Service Commissioner	46,000	49,300
Public Service Commissioner	46,000	49,300
Public Service Commissioner	46,000	49,300
Agriculture Commissioner	46,000	49,300
State Auditor	46,000	49,300
State Treasurer	46,000	49,300
Labor Commissioner	46,000	49,300
Supreme Court Chief Justice	60,785	65,648 (1st yr.) 70,243 (2nd yr.)
Other Justices	59,140	63,871 (1st yr.) 68,342 (2nd yr.)
Presiding District Court Judge	56,835	60,813 (1st yr.) 64,462 (2nd yr.)
Other District Court Judges	55,519	59,405 (1st yr.) 62,969 (2nd yr.)
County Court Judges ¹	47,191 to 55,519	47,191 to 59,405 (1st yr.) 47,191 to 62,969 (2nd yr.)
Legislators (session) ²	90/calendar day	90/calendar day
Legislators (interim committee work) ³	62.50/ calendar day	62.50/ calendar day

¹The minimum salary of a county court judge is 85 percent of the January 1, 1989, salary of a district court judge. The maximum salary of a county court judge is the salary of a district court judge.

²Legislators also receive \$180/month for expenses and \$35/calendar day (up to \$600/month) for lodging, and 20 cents per mile reimbursement by motor vehicle. House and Senate leaders receive an additional \$10/calendar day and assistant leaders and substantive committee chairmen receive an additional \$5/calendar day.

³Legislators also receive \$180/month for expenses, \$35/day for lodging, \$17/day for meals, and 20 cents per mile reimbursement by motor vehicle. Committee chairmen receive an additional \$5/day.

The committee received reports on the Legislative Compensation Commission's proposals for legislator compensation during the 1991 session and the 1991-92 interim. The committee learned that the state's judiciary ranks 46th in the nation in salary levels and that the states other elected officials' 1989 salary levels average 15 percent below the 1988 United States averages.

The committee considered, but does not recommend, legislation establishing an elected officials' compensation board to set the salary levels of the state's elected officials. Under the proposal discussed by the committee, the recommended salary level would have gone into effect unless disapproved by the Legislative Assembly.

In addition, the committee considered but does not recommend expanding the role of the Legislative Compensation Commission to include making salary recommendations for elected members of the judicial and executive branches. The committee believes that in order to undertake such a role, the commission's membership would need to be expanded to include representatives of the other branches of government and would be more costly because of the additional members and of the necessity to hold more meetings due to the expanded duties.

Court Unification

The committee heard testimony that in order to achieve statewide equality within the judiciary it must look toward a unified court system. The committee learned that although substantial progress has already been made in the structural and administrative unification of court services the state still has a two-tiered trial court system of district and county courts. There are currently 53 trial court judges—27 district court judges and 26 county court judges.

A unified system should provide a common funding base, full jurisdictional flexibility among trial courts, common understanding of the scope and elements of juvenile matters, and use of uniform procedures in the issuance of interim and protective orders.

In order to address the judiciary's long-term goal of a unified court system and concerns regarding the

workload and number of judges as well as the compensation levels of the state's county court judges, the committee asked the judiciary for assistance in developing a proposal for court unification.

The committee found that Montana has a two-tiered trial court system of district courts with general jurisdiction and justice of the peace courts with limited jurisdiction and that both Minnesota and South Dakota have unified trial court systems. However, the South Dakota system includes part-time lay magistrates with limited jurisdiction, whereas the Minnesota system does not.

The Judicial Conference formed the Ad Hoc Commission on Court Unification comprised of one Supreme Court justice, three district court judges, three county court judges, two attorneys, and the state court administrator to assist the committee in developing recommendations for court unification. District Court Judge Lawrence A. Leclerc chaired the commission. The commission met 10 times and made the following recommendations:

On January 1, 1995, the county court system would be abolished and the jurisdiction of the district court would be expanded to include the jurisdiction of the county court.

Beginning January 1, 1995, a county court judge elected in 1994 would serve four years as an interim district court judge (unless elected as a district court judge during that time), with the same duties as a county court judge prior to that date, except that the jurisdictional limit in civil cases would be raised from \$10,000 to \$15,000. The interim district court judge would be under the supervision of the presiding district court judge rather than the county commissioners.

Compensation of interim district court judges would continue to be determined and paid by the counties in which elected until an interim district court judge would become a district court judge or December 31, 1998, whichever is first.

Eight judicial districts, of which four would be major city districts, would be formed from the current seven districts prior to the November 1994 election with judgeships assigned to districts by the Supreme Court within limits of the maximum number of judgeships allowed by the Legislative Assembly. (As of January 1, 1999, and until changed by the Legislative Assembly or redistributed by the Supreme Court, there would be 42 district court judgeships—six in the northwest, four in the northwest central of Ward County, six in the northeast, five in the northeast central of Grand Forks County, five in the southeast, six in the southeast central of Cass County, four in the southwest, and six in the southwest central of Burleigh and Morton counties.)

Fifteen new district court judgeships would be combined with the existing 27 to comprise 42 district court judgeships—six in 1994 (one in Grand Forks, one in Stanley, two in Fargo, one in Minot, and one in Jamestown); eight in 1996 (one in Washburn, one in Watford City, one in Hillsboro, one in Rugby, one in New Rockford, one in Lisbon, one in Bismarck, and one in Mandan); and one in 1998 (in Langdon). These

new district court judgeships would replace the existing 26 county court judgeships. North Dakota Century Code Section 27-05-05 provides that the Supreme Court shall appoint a presiding district judge in judicial districts that have more than one judge. Court administrators will continue to be hired by each judicial district if the district has sufficient funds. Currently two districts do not have a court administrator.

Chamber cities would be located in Bottineau (one judge), Stanley (one judge - new as of January 1, 1995), Washburn (one judge - new as of January 1, 1997), Watford City (one judge - new as of January 1, 1997), Williston (two judges), Minot (four judges), Devils Lake (one judge), Grafton (one judge), Hillsboro (one judge - new as of January 1, 1997), Langdon (one judge - new as of January 1, 1999), New Rockford (one judge - new as of January 1, 1997), Rugby (one judge - new as of January 1, 1997), Grand Forks (five judges), Jamestown (two judges), Lisbon (one judge - new as of January 1, 1997), Valley City (one judge), Wah-

peton (one judge), Fargo (six judges), Dickinson (two judges), Hettinger (one judge), Linton (one judge), Bismarck (four judges), and Mandan (two judges) until changed by order of the Supreme Court.

Furnishings, equipment, and supplies would be transferred to the state whenever an interim district judge would become a district judge or on December 31, 1998, whichever is first. The county would continue to provide office and courtroom space, law library quarters, lights and fuel, and necessary court staff.

Eighty percent of court revenue currently deposited to the county treasury attributed to county court proceedings would be deposited in the state general fund when an interim district judge would become a district judge or beginning December 31, 1998, whichever is first.

An interim Legislative Council committee would be designated to monitor the progress of court consolidation.

Under this proposal implementation would be as follows:

Biennium	1989-91	1991-93	1993-95	1995-97	1997-99	1999-2001 and Beyond
State						
District court judges	27	27	33	41	42	42
			Six new judges - 1/1/95		Eight new judges - 1/1/97	
				One new judge - 1/1/99		
"County" court-related revenue	0%	0%	0%	80% of the revenue of the counties served by up to eight interim district judges if they are elected as a district judge - 1/1/97		
				80% of the remaining "county court" revenue - 1/1/99		
County						
County court judges	26	26	26 ¹	18-26	0	0
			(effective 1/1/95 become interim district judges under the supervision of the presiding district judge)	(depending if any of the eight new district judgeships are filled by interim district judges) - 1/1/97	(effective 12/31/98)	
New chambers			Stanley - 1/1/95			
			Washburn - 1/1/97 Watford City - 1/1/97 Hillsboro - 1/1/97 Rugby - 1/1/97 Lisbon - 1/1/97 New Rockford - 1/1/97			
			Langdon - 1/1/99			
"County" court-related revenue	100%	100%	100%	20% of the revenue of the counties served by up to eight interim district judges if they are elected as a district judge - 1/1/97		
				20% of the revenue of the remaining counties - 1/1/99		

¹ Unless some counties consolidate or dissolve their agreements prior to the November 1994 election.

The adoption of court unification would result in the reduction of 26 county court judgeships for a biennial compensation savings of approximately \$3.1 million to the counties for the judges' salaries plus related fringe benefits. In addition, the state would be responsible for expenses related to travel, court reporters or recorders, law libraries, indigent defense, and jury costs.

In addition, 15 new district judgeships and eight new chamber cities are created under the proposal. It has been estimated that a district court judgeship costs \$443,500 a biennium for compensation and operating (\$334,000), jury (\$25,000), indigent defense (\$70,000), and law library (\$14,500) expenses. Thus, projected biennial state costs to add these additional district court judgeships range from \$0 during the 1991-93 biennium to \$6.65 million beginning with the 1999-2001 biennium. The state fiscal impact would be reduced by the receipt of approximately \$2.1 million in court-related revenue from the counties, which represents 80 percent of the county court revenue.

A survey of the county courts revealed that annual county court expenditures are \$3.7 million and annual county court general fund revenue is \$2.6 million. However, county court revenues can vary greatly between counties because each judge has a different practice of establishing court administration fees.

The committee heard testimony in opposition to the ad hoc commission's court unification proposal as follows:

Forty-two judgeships cannot provide the level of service that the rural areas are accustomed to receiving because the judgeships will have to be concentrated in the urban areas.

Implementation is too rapid to provide for necessary evaluation and job security.

The Supreme Court is not given the express authority to redefine district boundaries and chamber cities, or to evaluate the placement of a vacant judgeship.

Representatives of the County Judges Association had the following suggestions which they believe provide for more efficient delivery of court services and which are compatible with an ultimate goal of court unification:

Provide a six-year term for all county court judges (they currently serve four-year terms; whereas district court judges serve six-year terms).

Allow county court judges to participate in the selection of the Chief Justice of the Supreme Court.

Allow district and county court judges to elect the presiding district court judge of their judicial district.

Increase the jurisdictional limit of county court judges in civil court cases from \$10,000 to \$15,000.

Give district and county courts dual jurisdiction over felony matters.

Allow county judges to hear district court matters without assignment in counties where no district judge is chambered.

Freeze the current county court boundaries and consolidate county courts based on population thresholds whenever vacancies occur.

Modify the salaries and benefits of the county court judges to more closely match the district court judges and provide for the state payment of county court judges' fringe benefits. (The cost to the state would range from \$477,100 to \$787,800 a biennium depending on the state's retirement contribution.)

In addition, Presiding District Court Judge Maurice R. Hunke and District Court Judge Donald L. Jorgensen testified that due to funding limitations and the rural nature of the area serviced the counties of Adams, Bowman, Hettinger, and Slope located in the Southwest Judicial District wish to contract with the district court for county court services because the county court caseload of those four counties is not sufficient to justify electing a full-time county court judge. Judge Hunke and Judge Jorgensen encouraged the committee to make this option available to all counties in the state upon the agreement of the Supreme Court and the district court judges of the district in which the agreement is to be made.

The committee also considered but does not recommend a bill draft providing for the Governor's appointment of county court judges and requiring that each appointed judge be subject to a vote of confidence after each term.

Conclusions and Recommendations Elected Officials' Compensation

Since revenue estimates for the 1991-93 biennium will not be available until December 1990 when the Governor's budget is released and because of uncertainties in oil and crop prices as well as weather conditions, the committee members believed they did not have enough information to recommend changes in compensation for justices of the Supreme Court, judges of the district and county courts, legislators, and other elected officials. Committee members believe the Legislative Assembly will be in a better position to determine compensation levels when it receives updated revenue estimates.

Court Unification

The committee recommends Senate Bill No. 2026 providing for the establishment of a single trial court system as follows:

Establishes the boundaries for eight judicial districts (currently there are seven) and the location of eight additional chamber cities (currently there are fifteen) until such time as changed by order or rule of the Supreme Court (refer to Exhibit "A" of proposed new boundaries).

Increases the number of district court judgeships from 27 to 42 over a five-year period (this represents an overall reduction of 11 judgeships - from 53 to 42).

Provides that on January 1, 1995, county court judges elected in 1994 would become interim district court judges with limited original jurisdiction.

Provides for the following when an interim district court judge is elected to a district court judgeship or when the interim district court judgeship is abolished on December 31, 1998, whichever is first:

Eighty percent of the court revenue deposited in the county treasury is to be deposited in the state general fund.

Counties will no longer be responsible for the interim district court judge's compensation.

Provides that the counties in which the district chambers are located are to provide office and courtroom space as well as other court staff.

Abolishes the county court as of January 1, 1995, and expands the jurisdiction of the district court to include the jurisdiction of the county court.

Provides that the Legislative Council may designate an interim committee to review and monitor court unification during the 1991-92, 1993-94, and 1995-96 interims.

The committee also recommends Senate Bill No. 2027 giving all counties the authority to contract with the district court for county court services; giving the Supreme Court the authority to determine whether a vacant district court judgeship should be continued, abolished, or transferred to another judicial district; and increasing the civil jurisdictional limit of a county court judge from \$10,000 to \$15,000.

In addition, the committee recommends Senate Bill No. 2028 extending the term of a county court judge from four to six years, allowing county court judges to participate in the selection of the chief justice of the Supreme Court, and allowing district and county court judges to elect the presiding district court judge of their judicial district.

OCCUPATIONAL AND PROFESSIONAL LICENSING FEES

Background

House Concurrent Resolution No. 3062 directed the Legislative Council to study the payment of state employee occupational and professional licenses by state agencies and institutions. The Legislative Assembly approved this study to determine if there is a lack of uniformity among state agencies and institutions in the payment of licenses held by their employees. The 1987 and 1989 Legislative Assemblies considered legislation prohibiting state payment of occupational and professional licenses, but in both instances, the measures were defeated.

Findings

Currently, each state agency and institution decides whether or not to pay for its employees' occupational or professional licenses.

According to a survey of state agencies and institutions conducted by the committee, 695 (of the 1,185 licensed) state employees' licenses are paid by the state as follows:

ANALYSIS OF TOTAL LICENSE TYPES AND FEES PAID BY STATE AGENCIES AND INSTITUTIONS DURING THE YEAR ENDED JUNE 30, 1989

	Number Licensed	Number Paid
Activity therapist	2	0
Addiction counselor	68	61
Athletic trainer	1	1
Atmospheric research manager	1	1
ART	1	1
Attorney	103	102
Audiologist	3	0
Boiler license	6	6
Boiler testing license	1	1
Certified public accountant	68	18
Certified well driller	1	1
Clinical psychologist	29	26
Dental hygienist	1	1
Dentist	1	1
Dietitian	9	4
Doctor	146	23
Drug enforcement agent	1	1
Electrician	24	24
Engineer	72	2
Instructor	9	9
Lab technician	2	2
Land surveyor	4	0
Mechanic	2	2
Medical record administrator	3	2
Medical technologist	2	2
National counselor	1	1
Nurse	341	214
Nursing home administrator	2	0
Occupational therapist	43	29
Pharmacist	16	9
Physical therapist	27	6
Physician assistant	2	2
Plumber	18	18
Pressure vessel inspector	2	2
Prosthetist	2	0
Psychologist	10	10
Radiology technician	1	0
Social worker	141	105
Speech therapist	16	6
Veterinarian	3	2
	1,185	695

The survey revealed that, for the most part, the differences exist between, not within, the agencies. Of the 695 employees whose licenses are paid, 637 are required to be licensed by law, 41 are required to be licensed by departmental policy, and 17 have their

licenses paid for other reasons. The survey also revealed that for the year ended June 30, 1989, the state paid \$44,088 for employees' licenses, of which \$29,048 was from the state general fund.

The committee surveyed other states and considered proposals varying from allowing each agency and institution to determine whether to pay for an employee's license to not paying for any licenses.

The committee considered but does not recommend a bill draft similar to the South Dakota provision requiring that the Office of Management and Budget verify that the payment of employees' occupational or professional license is in compliance with the agency or institution's policies or guidelines.

The committee learned that the duties of an employee can vary from one agency to another so that a license held by an employee and considered necessary by one agency may not be considered necessary by another agency.

Conclusion

The committee took no action regarding state payment of occupational and professional licenses. Committee members believe the employment situations of each agency and institution vary so that the decision of whether or not to pay for an employee's license should be left to management.

STATE PROPERTY INSURANCE COVERAGE

Background

House Concurrent Resolution No. 3083 directed the Legislative Council to study the adequacy of insurance coverage on state-owned property insured through the state fire and tornado fund and to determine the feasibility and desirability of providing business interruption insurance coverage to state agencies.

The Legislative Assembly approved this study to determine if the state's buildings and contents are underinsured.

Findings

According to a survey of state agencies and institutions conducted by the committee, the state owns buildings valued at over \$840 million and contents worth more than \$267 million which are insured for just under \$790 million (\$50 million below actual value) and \$263 million (\$4 million below actual value), respectively. These differences exist because most of the state's property is insured at actual cash value (replacement cost less depreciation for age and condition).

Also, although several of the state's entities are insured for replacement cost (the cost to replace a building or its contents with a similar structure of like material or a similar product at today's prices), in many instances, replacement cost appraisals are outdated or were not done by a professional appraiser. Over the past five years, the state has had losses of approximately \$4.72 million for which it collected \$4.29 million in insurance proceeds.

Most of the entities surveyed indicated they would purchase business interruption coverage if it were offered through the state fire and tornado fund. Several entities said they already purchased this coverage on their bonded and income-generating

buildings. The three most common types of business interruption coverage are:

1. Extra expense coverage - to cover additional expenses incurred due to a loss to avoid interruption.
2. Loss of earnings - to replace the income lost due to a loss.
3. Tuition fees insured - to cover income lost on dorm rent, meals, or tuition.

Other coverage requested was boilers and machinery, inland marine, residents' personal belongings, fine arts, trailers, and airplanes.

Through testimony, the committee learned that the Insurance Department has purchased appraisal software and plans to hire a consultant to assist agencies and institutions in completing appraisals of their property.

Recommendations

The committee recommends House Bill No. 1028 requiring that state-owned property constructed after 1939 be insured for replacement cost according to the underwriting guidelines of the state fire and tornado fund. The bill further requires that the Insurance Department conduct appraisals on state-owned property every six years and that the appraisal amount be adjusted annually in accordance with fire and tornado fund directives.

The committee also recommends House Bill No. 1029 giving the state fire and tornado fund the authority to offer business interruption insurance to provide coverage for loss of income or additional expenses incurred because of a property loss.

In addition, the committee recommends that audit reports prepared by the State Auditor contain information disclosing differences between the insured value of an entity's assets and their replacement cost.

REPORTS ON PAY EQUITY

Background

House Bill No. 1035 enacted in 1989 directed the Central Personnel Division to report to the Legislative Council on its findings and recommendations for implementing the state's pay equity policy establishing "equitable, nondiscriminatory compensation relationships among all positions and classes within the state's classification plan."

Legislation passed by the 1989 Legislative Assembly provided for the following:

Development of uniform compensation, classification, and salary administration plans for all classified employees. (The North Dakota Class Evaluation System, which has been in effect since 1975, is the state's classification plan and salary ranges developed for each position in the system make up the state's compensation plan.)

Implementation of the administratively factored classes - All classified employees must be under the North Dakota Class Evaluation System as of July 1, 1993.

Expansion of the working conditions factor to allow consideration of other "hazards" by July 1, 1991.

Development of guidelines for the state's payline exceptions.

Provide for more accurate positioning against the labor market and better communication of paysetting philosophy and procedures.

Appropriation of \$1,157,000 from the state general fund into the pay equity implementation fund to implement the administratively factored classes (this appropriation was reduced to \$1,059,715 by the budget allotments due to the referrals of the tax increase measures passed by the 1989 Legislative Assembly).

Appropriation of \$274,211 from the state general fund to the Central Personnel Division for two personnel analyst II positions and two personnel analyst I positions and related expenses (one position was lost in the budget allotments due to the referrals of the tax increase measures passed by the 1989 Legislative Assembly).

Findings

The committee determined the following in monitoring the implementation of pay equity legislation passed by the 1989 Legislative Assembly:

A salary administration policy has been developed and the division plans to hold a public hearing on the policy November 8, 1990, before the proposal is again presented to the State Personnel Board on November 27, 1990.

The administratively factored classes have been examined and the division expects to implement them fully by January 1, 1991, at an estimated cost of \$62,800 per month, or

\$1,507,200 a biennium (the original estimate was \$2,970,000 a biennium). It is expected that the pay equity implementation fund may be used for this purpose for the remainder of the 1989-91 biennium.

Guidelines for implementing the "hazard" factor will be developed by July 1, 1991; however, the factor will not be fully implemented by that time as required under North Dakota Century Code Section 54-44.3-12. The Central Personnel Division has stated that it will cost less to implement this factor than was originally estimated (\$8,775,000), but could not give the committee any cost estimates.

Guidelines for payline exceptions will be developed by July 1, 1991.

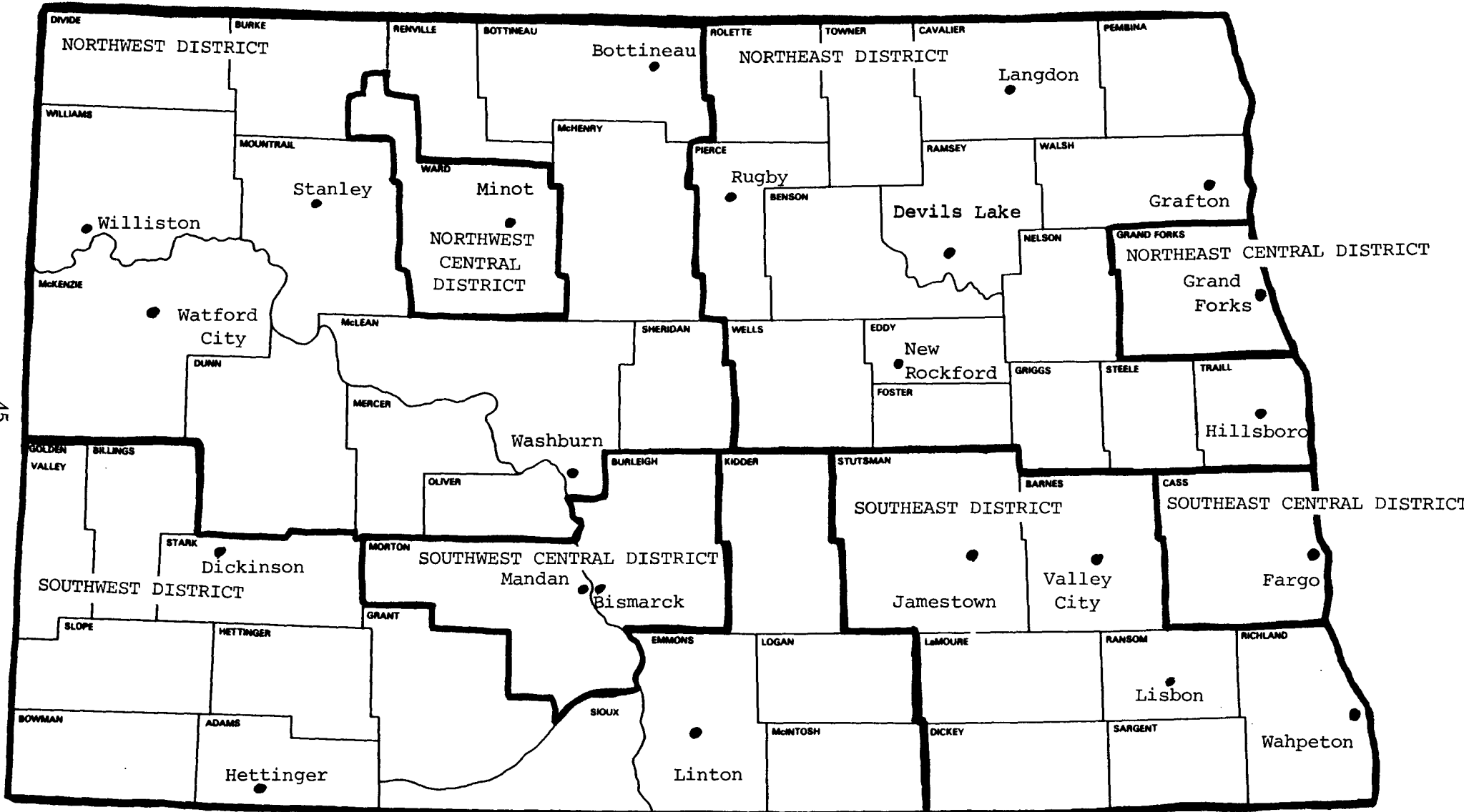
Speciality surveys are being conducted at agency request in an effort to focus more clearly on a particular class.

Personnel forums are being held for lower level managers and first level supervisors and the division has started to publish articles in the Communicator in an effort to communicate more clearly paysetting philosophy and procedures to state employees.

Conclusion

The committee accepted the reports of the Central Personnel Division on its progress in implementing the pay equity recommendations of the 1989 Legislative Assembly. In addition, the committee asked that the division provide cost estimates to the 1991 Legislative Assembly on full implementation of the hazard factor so that it can determine whether the July 1, 1991, implementation date can be met.

PROPOSED JUDICIAL DISTRICTS



BUDGET COMMITTEE ON GOVERNMENT FINANCE

The Budget Committee on Government Finance was assigned four study resolutions. House Concurrent Resolution No. 3049 directed a study of consolidating the various agricultural loan programs administered by the Bank of North Dakota. Senate Concurrent Resolution No. 4035 directed a study of the purposes, powers, duties, management, and operations of the Bank of North Dakota. Senate Concurrent Resolution No. 4053 directed a study of providing incentives to North Dakota graduates to remain in North Dakota after graduation and of increasing tuition at the institutions of higher education while providing low interest loans to students to cover the increased tuition costs. House Concurrent Resolution No. 3085 directed a study of State Forester price levels for state nursery seeds and planting stock.

The committee was also assigned the responsibility to monitor the status of state agency and institution appropriations, receive the state retirement funds' actuarial valuation reports, and receive the reports of the amounts considered necessary for a group health insurance program contingency reserve fund.

Committee members were Representatives Roy Hausauer (Chairman), Bruce E. Anderson, Gordon Berg, Jim Brokaw, Sarah Carlson, Quentin E. Christman, Richard S. Clayburgh, Kathi Gilmore, Harley Kingsbury, Jack Murphy, Jim Peterson, Raymond Schmidt, R. L. Solberg, Bill Sorensen, Vern Thompson, and Harold N. Trautman and Senators Ray David, Meyer D. Kinnoin, Byron Langley, Pete Naaden, and Jerry Waldera. Senator Clark Ewen was a member of the committee prior to his death in September 1990.

The report of the committee was submitted to the Legislative Council at the biennial meeting of the Council in November 1990. The report was adopted for submission to the 52nd Legislative Assembly.

BANK OF NORTH DAKOTA PURPOSES, POWERS, DUTIES, AND OPERATIONS

Background

Senate Concurrent Resolution No. 4035 directed a study of the purposes, powers, duties, management, and operations of the Bank of North Dakota (Bank). The resolution stated that the performance of the Bank should be evaluated to determine whether additional functions of the Bank may contribute to the economic development and general welfare of the people of the state and whether retention by the Bank of a greater portion of its earnings could provide meaningful sources of funding to carry out its purposes.

The Bank was established in 1919 to encourage and promote agriculture, commerce, and industry. The Bank consists of five main departments—retail, operation, investment, lending services, and special loan programs.

The following is a history of the Bank's profits and transfers since 1981:

Bank of North Dakota Profits:

<u>Year Ending</u>	<u>Amount</u>
December 31, 1981	\$ 6,084,850
December 31, 1982	<u>7,824,137</u> \$13,908,987
December 31, 1983	\$11,182,816
December 31, 1984	<u>9,318,272</u> \$20,501,088
December 31, 1985	\$12,335,295
December 31, 1986	<u>9,782,052</u> \$22,117,347
December 31, 1987	\$12,702,682
December 31, 1988	<u>15,239,724</u> \$27,942,406
December 31, 1989	\$15,175,852
December 31, 1990 (estimate)	<u>14,000,000</u> \$29,175,852

Bank of North Dakota Transfers to the State General Fund:

<u>Biennium</u>	<u>Amount Transferred</u>
1981-83	\$ 5,000,000
1983-85	5,000,000
1985-87	7,000,000
1987-89	12,000,000
1989-91	14,000,000

Other Transfers:

<u>Biennium</u>	<u>Transfer</u>	<u>Amount Transferred</u>
1981-83	Community water facility loan fund	\$ 5,000,000
1983-85	Beginning farmer loan program	5,000,000
1985-87	Home-quarter purchase fund	2,000,000
1989-91	Beginning farmer loan program	3,000,000

Committee Review

The committee reviewed the Bank's powers, management, operations, and future role. Consideration was given to the following changes at the Bank:

1. Transfer the Bank's profits on a percentage basis with 20 percent for internal growth and 80 percent for state programs, including transfers to the state general fund. Some suggestions for use of the 80 percent included allocating a portion to the partnership in assisting community expansion fund (PACE) which is a fund to be used by the Bank of North Dakota to participate with financial institutions making loans for economic development. Another use could be an allocation for statutorily established agriculture-related loan programs.
2. Change the Bank's appropriation process to allow it to expand or introduce programs to take advantage of current market situations.

3. Have the Bank fund a manufacturing expansion loan pool to provide below market rate financing for expansion of durable goods manufacturing.
4. Increase the North Dakota state government's involvement in economic development by transforming and expanding the existing Bank into a new entity called the Development Bank of North Dakota. The Development Bank would have a financial division and an economic division.

At the committee's last meeting, Bank officials asked the committee to consider the Governor's recommendation that \$22.8 million of the Bank of North Dakota's 1991-93 biennium profits be used for economic development. The \$22.8 million would be allocated during the 1991-93 biennium as follows:

Loan Type/Agency	Amount
Agriculture	\$ 3,500,000
Manufacturing, energy, exploration services	12,000,000
Partnership in assisting community expansion	3,000,000
Community infrastructure, e.g., technical assistance and marketing	1,000,000
Dakota Spirit - local technical support	1,000,000
Current Economic Development Commission general fund appropriation not including tourism division	2,300,000
Total	\$22,800,000

Recommendations

The committee recommends Senate Bill No. 2029 to allocate the annual net income of the Bank of North Dakota as follows:

1. Fifty percent to be transferred to the state general fund.
2. Twenty percent to be retained by the Bank to increase its capital structure.
3. Ten percent or \$1,500,000, whichever is less, to be allocated to the partnership in assisting community expansion fund. The Bank must use this fund to participate with financial institutions for making loans for business projects involving manufacturing, processing, and service industries and to participate with any city or county in this state in reducing a portion of the rate of interest on those loans.
4. Ten percent or \$1,500,000, whichever is less, to be allocated for use by the Bank for statutorily established agriculture-related loan programs under its supervision.
5. The remaining amount to be retained, transferred, or allocated as provided by the Legislative Assembly.

The committee recommends the profits be distributed on a percentage basis to assure that the Bank has adequate earnings retained to ensure growth and solvency, to ensure that only 100 percent of the Bank's earnings are distributed or allocated, and to provide that the Bank earnings are used for a

number of programs. Although the committee does not recommend the allocation of the \$22.8 million Bank profits for the 1991-93 biennium as proposed by the Governor, under the committee's bill the Legislative Assembly may allocate moneys for the same purposes through general fund appropriations, rather than direct transfers from Bank undivided profits.

The committee also recommends that the Legislative Assembly be encouraged to include in the Bank's appropriation bill a separate section providing for a contingency appropriation allowing the Bank to respond to unforeseen events, including profit enhancement programs, subject to Budget Section approval. The committee made this recommendation to provide the Bank of North Dakota flexibility for enhancing its services and profits potential.

BANK OF NORTH DAKOTA-RELATED AGRICULTURAL LOAN PROGRAMS Background

House Concurrent Resolution No. 3049 directed a study of consolidating the various agricultural loan programs administered by the Bank of North Dakota (Bank). The resolution states that since the Bank administers a number of agricultural loan programs with varying requirements and terms and varying participation by lending institutions, consolidation of the programs may simplify the process for people to receive loans. The following are the agricultural loan programs administered by the Bank and each program's outstanding balance as of January 31, 1989:

Agriculture-Related Loan Program	Outstanding Balance as of January 31, 1989
Programs that are Bank assets	
Beginning farmer real estate loan program/established farmer real estate loan program	\$ 8,889,603
Federal Land Bank debt restructuring loans	7,631,810
Lender acquired farm real estate	275,338
Farmers home guarantee loans	447,288
Commercial farm/ranch participation loans (purchased from other banks)	29,359,104
Agribusiness operating loans	55,565
Farm survival loans (Family Farm Survival Act of 1985)	867,485
Family farm loan program	2,404,280
Commodity Credit Corporation loan program	1,000,000
Total of agriculture-related programs that are Bank assets	\$50,930,473

Agriculture-Related Loan Program (continued)	Outstanding Balance as of January 31, 1989
Agriculture-related loan programs administered by the Bank but not assets of the Bank	
Beginning farmer revolving loan fund	\$ 5,915,269
Board of University and School Lands loan fund	36,136,849
Rural Rehabilitation Corporation loan fund	2,410,776
Home-quarter purchase loan fund	34,138
Total of agriculture-related programs that are not Bank assets	\$44,497,032
Grand total of Bank of North Dakota outstanding loans of agriculture-related programs	\$95,427,505

In response to the concern about the lack of farm loan program information, the Bank reported that it is developing information to inform interested persons about its agricultural loan programs. The Bank has recently released a pamphlet entitled "Financing Agriculture" which summarizes all the Bank's agricultural loan programs. In addition, the Bank is holding seminars on its agricultural loan programs.

Recommendations

Senate Bill No. 2029, which is recommended by the committee regarding distribution of the Bank of North Dakota profits (described under the portion of this report entitled "Bank of North Dakota Purposes, Powers, Duties, and Operations"), includes 10 percent or \$1.5 million to be allocated to agricultural loan programs. The committee does not make a recommendation to consolidate the various agricultural loan programs administered by the Bank of North Dakota since each agricultural loan program administered by the Bank is unique and each program is established to address specific problems.

HIGHER EDUCATION LOAN PROGRAMS AND TUITION

Background

Senate Concurrent Resolution No. 4053 directed a study of the feasibility and desirability of providing incentives to North Dakota graduates to remain in North Dakota after graduation and of increasing tuition at the institutions of higher education and providing low interest loans to students to cover the costs of increased tuition.

The committee's study included reviewing the higher education student finance programs and tuition rates, receiving testimony from higher education students, and conducting surveys of students regarding the need for additional loan programs. The committee found:

- Students do not favor increasing tuition if the additional revenue is to create a loan program.

- Loan forgiveness is not as major a factor in retaining students in North Dakota as are good job opportunities.
- A low interest loan program may not be desirable unless the annual loan amount is substantial.
- A low interest loan program could be funded through the student loan trust reserves.
- Internship programs may help retain students in the state.

The committee considered a student loan interest rate reduction program to be administered by the Bank of North Dakota. The program would have provided that a resident student who would receive a loan from the parents loan for undergraduate students (PLUS) program or supplemental loans for students (SLS) program would have been eligible for an interest rate reduction of three percentage points. The interest rate reduction would have been for the period the student attended school and for one year after graduation and an additional five years if the student continuously retained residency in the state. The program would have required funding of approximately \$1.5 million per biennium to reduce the interest rate for five years or approximately \$2.5 million per biennium to reduce the interest rate for 10 years.

The committee at its September 1990 meeting was advised of a new Industrial Commission low interest loan program to make loans available by July 1, 1991. The program is the nonsubsidized Stafford loan program which will provide low interest loans to middle income borrowers. The Bank of North Dakota will originate the loans and the student loan trust will purchase the loans. The loans will be made available to residents in North Dakota attending any eligible institution inside or outside of North Dakota and nonresidents attending any eligible institution in North Dakota. The nonsubsidized Stafford loans will be used by students who, because of the family income or assets, are not eligible for the regular Stafford loan. The interest rate will be eight percent for the first four years increasing to 10 percent at the start of year 5. The amount estimated to be available from the student loan trust by July 1, 1991, is \$39 million and the estimated annual demand is \$8 million. The initial \$39 million will provide funding for at least four years or through the 1994-95 school year. In addition, an additional \$30 million of funds will be available to extend the program beyond the 1994-95 school year.

Recommendations

The committee supports the nonsubsidized Stafford loan program authorized by the Industrial Commission and because of the creation of this program does not recommend a bill draft considered by the committee to create a student loan interest rate reduction program. The committee does not recommend increasing tuition rates for low interest loans since the nonsubsidized Stafford loan program will provide funding for low interest loans.

STATE FORESTER PRICE LEVELS

Background

House Concurrent Resolution No. 3085 directed a study of the price levels the State Forester should establish for seeds and planting stock from the state nursery. The resolution states it may be advantageous for the State Forester to be allowed to charge more than production, collection, and transportation costs in order to accumulate reserves for use in unusual circumstances such as crop loss or special projects. The 1989 Legislative Assembly passed legislation allowing the State Forester to charge 110 percent rather than 100 percent of the cost to the state for planting stock and seeds. The State Forester is charging 25 cents per tree which is 110 percent of the cost of production. The additional 10 percent charged for the cost per tree is 2.28 cents which generates approximately \$55,000 per biennium.

The State Forester asked for the authority to deposit the revenue from the additional 10 percent of cost charge into a reserve account to be used for emergencies. A reserve account for the state nursery is necessary for unexpected crop losses, emergency expenses, or special programs such as the Centennial tree program. The committee found that because tree seedlings are specialized and costly, crop insurance is not feasible. Crop losses can occur due to unfavorable conditions such as drought or disease.

The committee toured the state nursery at Towner on its September 1990 budget tour. The committee viewed the nursery's operations, facilities, and stocks. The state nursery occupies 160 acres of land and has an annual production of approximately 1.2 million trees.

Recommendations

The committee recommends House Bill No. 1030 establishing a State Forester reserve account to be used within limits of legislative appropriations by the State Forester subject to the Legislative Council's Budget Section approval. Moneys in the reserve fund can be used for expenses relating to nursery seed

losses or other unanticipated events. The bill also provides that if the balance of the State Forester reserve account exceeds \$500,000, charges for state nursery seedlings must not exceed estimated production costs until the account's balance is less than \$200,000, at which time the State Forester may charge 110 percent of production costs.

STATE RETIREMENT FUNDS' ACTUARIAL VALUATION REPORTS

Background

North Dakota Century Code Section 54-52-06 requires that the Public Employees Retirement System submit to each session of the Legislative Assembly, or a designated committee, a report of the contributions necessary, as determined by the actuarial study, to maintain the fund's actuarial soundness. The committee was assigned the responsibility to receive the Public Employees Retirement System actuarial valuation report. In addition, the Legislative Council assigned the committee the responsibility to receive the Teachers' Fund for Retirement and Highway Patrolmen's Retirement System actuarial valuation reports. During the interim the committee received the actuarial valuation reports for the Public Employees Retirement System, the Highway Patrolmen's Retirement Fund, and the Teachers' Fund for Retirement as of July 1, 1988 and 1989.

Actuarial Valuation Reports

The actuarial valuation reports show the percentage of employee compensation necessary to be deposited in each fund to meet the fund's objectives for the fiscal year. For fiscal year 1990 the percentage of employee compensation necessary to meet the Public Employees Retirement System, Highway Patrolmen's Retirement Fund, and Teachers' Fund for Retirement objectives and the actual percentage of compensation paid to the Public Employees Retirement System, Highway Patrolmen's Retirement Fund, and Teachers' Fund for Retirement funds are:

For Fiscal Year 1990	Public Employees Retirement System	Highway Patrolmen's Retirement Fund	Teachers' Fund for Retirement
Total percentage compensation necessary to fund objectives	8.19%	24.28%	12.68%
Membership assessment (paid by state for state employees)	4.00	10.3	6.75
Employer contribution requirement	4.19%	13.98%	5.93%
Actual employer contribution	4.12%	16.7%	6.75%
Actual contribution over (under) required contribution	(.07)%	2.72%	.82%

The July 1, 1988, report indicated the Public Employees Retirement System actual contributions exceeded required contributions by 3.6 percent. This margin, along with other funds, was used by the 1989 Legislative Assembly for the following purposes:

Change	Estimated Actuarial Cost
Increase the benefit multiplier from 1.5 to 1.65 percent and base benefits on a salary averaging period of 36 months rather than 60 months	3.0%
Contribute one percent of compensation for funding a retiree health program	1.0%
Eligibility rules reduced to five years of service rather than eight years	0.06%
Total	4.06%

The retirement funds' actuarial valuation report dated July 1, 1990, projecting the actuarial assumptions and costs for fiscal year 1991 were not available to present to the committee.

Conclusion

The committee makes no recommendations to reduce or increase future employer contributions of the three retirement systems since the contribution levels are near the required levels. Some margin of difference may be expected since investment values fluctuate due to market conditions and projected fund costs are estimates based on prior fund experience from which actual future costs may vary.

GROUP HEALTH INSURANCE PROGRAM CONTINGENCY RESERVE FUND

North Dakota Century Code Section 54-52.1-04.3 requires the Public Employees Retirement System to submit to each session of the Legislative Assembly, or such committee as may be designated by the Legislative Council, a report of the amount necessary in the group health insurance program contingency reserve

fund. The committee was assigned the responsibility to receive the Public Employees Retirement System's report determining the amount necessary in a group health insurance program contingency reserve fund.

It was reported to the committee that since the Public Employees Retirement Board does not administer a self-insurance plan a group health insurance program contingency reserve fund is not necessary. The board contracted with Blue Cross Blue Shield for a commercially insured program.

MONITORING THE STATUS OF APPROPRIATIONS Background

Since the 1975-76 interim, a Legislative Council interim committee has monitored the status of major state agency and institution appropriations. The Budget Committee on Government Finance was assigned this responsibility for the 1989-90 interim. The committee's review focused on expenditures of major state agencies including the institutions of higher education and the charitable and penal institutions, the appropriations for the foundation aid program, and the appropriations for the Department of Human Services for aid to families with dependent children and medical assistance. The committee also heard a Legislative Council report on agency compliance with legislative intent for the 1989-91 biennium.

Status of Appropriations of Major Agencies

To assist the committee in fulfilling its responsibility of monitoring the status of major appropriations, the Legislative Council staff prepared periodic reports on the following:

1. Overview of total expenditures and revenues at the higher education and charitable and penal institutions.
2. Number of residents and personnel at the charitable and penal institutions.
3. Foundation aid program payments.
4. Aid to families with dependent children and medical assistance payments.

For the 1989-91 biennium, the state agencies' general fund appropriations were reduced by \$67.4 million due to tax referrals. The following is a schedule of the 1989-91 biennium state general fund appropriations:

1989-91 Legislative Total General Fund Appropriation Amount	Net Reduction due to Tax Referrals	Transfers From the Budget Stabilization Fund	Two Percent August 1990 Unallotments	1989-91 Biennium Revised General Fund Spending Authority	Difference From Legislative Appropriations
\$1,119,785,620	\$(95,763,770)	\$5,967,192	\$22,395,712	\$1,052,384,754	(\$67,400,866)

In summary, the reports given to the committee regarding budget monitoring indicated the following:

1. The charitable and penal institutions after utilizing the funding from the budget stabiliza-

tion fund transfers and two percent unallotments were making the necessary adjustments to spend within the limits of the reductions resulting from the tax referrals.

2. The populations, enrollments, and FTE positions for fiscal year 1990 at the State Hospital and State Developmental Center were less than estimated. The estimated and actual average

monthly populations and FTE positions for 1990 at the State Developmental Center and State Hospital were as follows:

Institution	Estimated or Authorized	Actual	(Over) Under
State Development Center			
Average monthly student population	250.00	228.00	22.00
Average monthly FTE positions	894.00	771.00	123.00
State Hospital			
Average monthly resident population	427.00	347.00	80.00
Average monthly FTE positions	780.85	706.24	74.61

3. The higher education institutions, through a \$300 tuition increase and spending reductions, were making the necessary adjustments due to the tax referrals.
 4. The 1989 Legislative Assembly appropriated \$374.2 million from the general fund for foundation aid payments. Due to the adjustments

made for tax referrals and August 1990 revised revenue estimates, the revised amount for general fund foundation aid program payments was \$351.2 million. The following is a schedule on per-pupil and tuition fund payments for each year of the biennium:

	Original Estimates for 1989-90	Adjusted Estimates After Budget Reductions for 1989-90	Original Estimates for 1990-91	Adjusted Estimates After Budget Reductions for 1990-91	Adjusted Estimates After Two Percent Unallotment for 1990-91
Per-pupil payments*	\$1,525	\$1,411	\$1,545	\$1,431	\$1,495
Tuition fund payments	200	199	200	200	200
Total payments	\$1,725	\$1,610	\$1,745	\$1,631	\$1,695

*Actual per-pupil payments paid by the state to school districts are reduced by 21 mills for 1990 and 22 mills for 1991.

Status of the General Fund

The Budget Committee on Government Finance and the Budget Section heard reports by the Office of Management and Budget regarding the status of the state general fund. Please refer to the Budget Section report for a summary of the Office of Management and Budget reports.

Agency Compliance with Legislative Intent

The Legislative Council staff prepared a report on state agency compliance with legislative intent and agency budget reductions for the 1989-91 biennium. Copies of the report are on file in the Legislative Council office. The report is based on the Legislative Council staff analysis including visitations with agency administrators regarding compliance with legislative intent included in the agency's 1989-91 appropriations. The report also includes changes

made to agency operations since the beginning of the 1989-91 biennium and information by agency on the effect of the budget reductions as a result of the tax referrals.

TOUR GROUPS

The committee conducted a tour of the Bank of North Dakota and a budget tour of Minot State University, State Fair Association, North Central Research Center, School for the Deaf, Fort Totten State Historic Site, University of North Dakota - Lake Region, Camp Grafton, Towner State Nursery, San Haven, International Peace Garden, Lake Metigoshe State Park, North Dakota Forest Service, and North Dakota State University - Bottineau. On the tours the committee heard of institutional needs for capital improvements and any problems the in-

stitutions or other facilities may be encountering during the interim.

The tour group minutes are available in the Legislative Council office and will be provided in report form to the Appropriations Committees during the 1991 Legislative Assembly.

OTHER COMMITTEE ACTION

The committee received a report on the higher education capital construction and acquisition projects authorized by the 1989 Legislative Assembly. The 1989 Legislative Assembly authorized the construction and acquisition of higher education projects totaling \$26,414,000. It was reported to the commit-

tee that it was the intent of the Legislative Assembly that \$4.4 million from nongeneral fund sources be used to assist in the retirement of the debt incurred to finance the construction projects. The construction projects were initially delayed due to the tax referrals; however, bonds were issued late in the interim to finance the projects. The repayment schedules include an agreement that during the 1991-93 biennium the higher education institutions will pay \$1.9 million of the total \$4.4 million due from nongeneral fund sources. The remaining \$2.5 million will be provided in the amount of approximately \$278,000 per biennium over the term of the bond payments which is for nine bienniums through the year 2011.

BUDGET COMMITTEE ON HUMAN SERVICES

The Budget Committee on Human Services was assigned three studies. House Concurrent Resolution No. 3001 directed a review of the implementation of additional community services for the mentally ill and chemically dependent and the effect these services have on the future services to be provided by the State Hospital. Senate Concurrent Resolution No. 4014 directed a study of governmental policy regarding organ and tissue transplants. Senate Concurrent Resolution No. 4030 directed a study of child care issues and needs including the feasibility and cost of providing child care support to low income working families. In addition, the chairman of the Legislative Council directed the committee, while conducting meetings in cities around the state, to visit developmental disability facilities.

In addition, the Budget Committee on Human Services and the Budget Committee on Long-Term Care conducted a study, at the request of the Legislative Council chairman, of the human service delivery system. Please refer to the report of the Budget Committee on Long-Term Care for the details regarding this study. This report includes a summary of the joint study.

Committee members were Representatives Tish Kelly (Chairman), Rick Berg, Jack Dalrymple, Gerold F. Gerntholz, Brynhild Haugland, Roxanne Jensen, Kevin Kolbo, Rod Larson, Bruce Laughlin, Jeremy Nelson, Beth Smette, Harold N. Trautman, Francis J. Wald, and Gene Watne and Senators Jerome Kelsh, Tim Mathern, Jerry Meyer, Wayne Stenehjem, Russell T. Thane, and James C. Yockim.

The report of the committee was submitted to the Legislative Council at the biennial meeting of the Council in November 1990. The report was adopted for submission to the 52nd Legislative Assembly.

STUDY OF SERVICES FOR THE MENTALLY ILL AND CHEMICALLY DEPENDENT

House Concurrent Resolution No. 3001 states the development of expanded community services for the mentally ill and chemically dependent during the 1989-91 biennium will affect the future role of the State Hospital. The resolution also states significant state resources may be required during future bienniums as community services are expanded and the State Hospital's role in the provision of services is redefined.

Background

The 1989 Legislative Assembly appropriated \$5 million from special funds in Senate Bill No. 2538, consisting of additional income from federal and other funds and from the sale of loans in the developmental disabilities loan fund, to provide expanded community programs of active treatment for mentally ill and chemically addicted individuals to reduce the average daily census of patients at the State Hospital. The Department of Human Services planned to spend approximately 45 percent of the additional appropriations on private providers for purchase of services and 55 percent to be spent by

human service centers for assessment and treatment services and nurse positions required by the Omnibus Budget Reconciliation Act of 1987 relating to screening nursing home residents for mental illness. The appropriation anticipated regional intervention services in Williston and Fargo in addition to the program established in the Bismarck region during the 1987-89 biennium. A total of 58 FTE positions were anticipated to be hired with this funding. In addition, Senate Bill No. 2538 also appropriated \$721,000 from special funds for use at the State Hospital to continue funding for 18 positions at the hospital through January 1, 1991, and other costs to address State Hospital deficiencies identified by accreditation organizations.

The enhanced appropriation for community services for the mentally ill and chemically dependent included funds for professionals in the human service centers to respond to voluntary State Hospital admission requests, to provide case managers and community residential and psychiatric services to divert potential admissions and serve current State Hospital patients discharged, to provide additional addition counselors and community detoxification services, and to fund OBRA nurse positions to assist in reviewing nursing care facility residents.

The following are the expected outcomes of the additional funding for community mental health and addiction services:

1. Divert inappropriate voluntary and involuntary admissions from the State Hospital to community-based services.
2. Decrease the State Hospital average daily census by 85 prior to June 30, 1991, permitting more effective and efficient use of the hospital staff and space.
3. Complement and expand community-based services to better serve individuals and families in home communities.
4. Continue Medicare certification and joint commission accreditation at the State Hospital.
5. Comply with OBRA 1987 nursing home reform regulations regarding services for the mentally ill.

Budget Reductions

As a result of the December 5, 1989, tax referrals the enhanced budget for community services for the mentally ill and chemically dependent was reduced by \$1.4 million from \$5 million to \$3.6 million resulting in 26 of the 58 additional staff positions being eliminated. The Department of Human Services said the effect of these reductions is to strain human service center resources and staff and to underserve other client areas because of the continually increased demand for services to the mentally ill and chemically dependent.

Status Reports on Regional Services

The Department of Human Services at each committee meeting presented status reports regarding the implementation of community services for the

mentally ill and chemically dependent. Regional human service center directors testified on the implementation of these programs and identified the following concerns and needs:

1. After hour transportation of clients from screening sites to crisis residential services is lacking.
2. Qualified staff members are difficult to recruit and retain.
3. Adequate psychiatric consultant time is not available.
4. Adequate funding for local hospitalization of certain clients for medical detoxification is needed.
5. Specific nontraditional, structured, and controlled treatment settings for individuals with a dual diagnosis of mental illness and alcohol and drug abuse problems are needed.
6. Who will pay for medical treatment of individuals in addition to psychiatric or chemical dependency treatment costs is a concern.
7. Additional funding for social detoxification, residential services, and day treatment programs is needed.
8. An increase in tribal commitments of patients for treatment at the State Hospital is a concern.
9. Additional treatment programs for individuals with a dual diagnosis of mental illness and chemical dependency, including residential facilities, are needed.
10. A long-term residential halfway house for chemical dependent placements is needed.
11. Community-based services and community support programs in rural areas are needed.

12. Comprehensive service programs for children and adolescents are needed.
13. Prevention, early identification, and intervention for children and youth with mental illness or chemical dependence are needed.
14. Reduction in available services to the Indian population due to budget reductions is a concern.
15. The potential effect of early releases from the State Penitentiary of individuals with mental illnesses or chemical dependency problems on community services is a concern.

The committee reviewed comparative charges for chemical dependency services of the regional human service centers and private providers. The committee learned the Department of Human Services determines an average cost of each service provided at the regional human service centers, which is used in billing for services except in cases where the average cost exceeds the market rate the market rate is used. Individuals are required to pay based on their ability to pay. The committee learned the Department of Human Services uses private providers to provide services to the mentally ill and chemically dependent and plans to provide followup on individuals at regular six-month intervals to determine and demonstrate the effectiveness of treatment and the cost effectiveness of private providers providing the services.

The Department of Human Services at the committee's last meeting presented, on a regional basis, the 1989-91 adjusted budget and 1991-93 requested budget for mental health and chemical addiction programs at the regional human service centers summarized as follows:

Service	1989-91 Adjusted Budget	1991-93 Budget Request
Chemical dependency programs	\$ 5,008,889	\$ 5,516,550
Seriously mentally ill programs	16,669,359	17,430,225
Total	\$21,678,248	\$22,946,775
Less:		
Federal funds	(11,173,656)	(8,501,936)
Other funds	(4,499,699)	(1,752,228)
General fund	\$ 6,004,893	\$12,692,611

The funds requested for the 1991-93 biennium do not include any funds for salary increases that may be provided for state employees.

In addition, the Department of Human Services provided information regarding regional mental health and addiction service needs not included in the department's 1991-93 budget request. The following is a summary of the unbudgeted regional needs that were not included in the department budget request because of the Office of Management and Budget's guidelines that required the department to limit its requested increase:

Service	FTE	1991-93 Cost
Chemically dependent and seriously mentally ill adults (includes \$536,000 for clozapine drug costs)	40.0	\$4,177,653
Children and adolescents with emotional and behavioral disorders	46.5	3,597,762

Service (continued)	FTE	1991-93 Cost
Total	86.5	\$7,775,415
Less: Federal and other funds		(1,166,312)
Estimated general fund cost		\$6,609,103

The following is a regional listing of the unbudgeted additional services identified by the human service centers:

Regional Human Service Center	Additional Services Requested	Adult or Children and Youth Services	Estimated Cost
I. Northwest - Williston	1 8-bed facility for dual-diagnosis residents, with 1 CMI case manager, 1 addiction counselor, and 1 administrative secretary II	Adult	\$ 399,283
	A 25 percent increase in services with 1 clinical psychologist, 2 social worker IIIs, 1 addiction counselor II, and 1 administrative secretary, including restoring outreach services	Children and youth	396,410
II. North Central - Minot	Establish a regional intervention services program, including 6 FTE and \$140,000 for short-term inpatient contracts	Adult	462,628
	Establish a diagnostic and treatment unit for children and adolescents, including 6 FTE and \$62,400 for a psychiatric consultant	Children and youth	479,824
III. Lake Region - Devils Lake	Provide 2 additional addiction counselors, fund a crisis residential unit (\$220,000 contract), and fund adult protective services	Adult	419,296
	Native American services specialist, child protection treatment services, adolescent addiction counselor, child/adolescent treatment coordinator, and support staff	Children and youth	312,154
IV. Northeast - Grand Forks	Additional psychiatric services, including 2 CMI case managers, 2 addiction counselors, additional support staff, and additional funds for supported employment	Adult	500,000
	Parenting coordinator/trainer, intensive in-home services, case aides, support staff, foster care recruiter, and professional foster parents for a 4-plex independent living program	Children and youth	500,000
V. Southeast - Fargo	1 CMI case manager, regional intervention services, additional case management services, 1 addiction counselor, and additional support staff	Adult	602,742
	2 addiction counselors, 1 human relations counselor, 1 clinical psychologist, and contract for adolescent residential treatment and detoxification services	Children and youth	567,706
VI. South Central - Jamestown	1 additional psychiatrist, 1 clinical psychologist, and 1 case manager	Adult	442,492
	1 social worker, 1 addiction counselor, and 1 clinical psychologist to provide the needed specialized services	Children and youth	255,274
VII. West Central - Bismarck	Additional psychiatric services, fund OBRA nurse position, develop senior chemical health program, serve homeless individuals, additional case management, medical services for clients, and vocational rehabilitation services	Adult	548,887
	Additional psychiatric services, expanded diagnostic and treatment services, expansion of therapeutic foster care program with supportive clinical services, and develop an adolescent addiction program	Children and youth	555,304

Regional Human Service Center (continued)	Additional Services Requested	Adult or Children and Youth Services	Estimated Cost
VIII. Badlands - Dickinson	Fund a volunteer coordinator position and contract for inpatient treatment	Adult	103,955
	Fund a children and adolescent services team and a family preservation unit	Children and youth	368,720
	Fund outreach services and 1 full-time psychiatrist	Adult, children, and youth	324,740
Statewide	Funds for the drug clozapine to be available at the regional centers	Adult	536,000
Total			\$7,775,415

State Hospital Review

Representatives of the State Hospital presented several reports to the committee regarding population changes, tribal commitments, the future role of the State Hospital, priorities for admissions to the State Hospital, the use of State Hospital savings at the human service centers, and income problems summarized as follows:

1. The population at the State Hospital has decreased from 434 patients in March 1989 to approximately 300 patients in September 1990. The reductions were a result of services being provided at the regional human service centers rather than at the State Hospital because of the availability of community service alternatives. As additional community services are developed, the State Hospital can change its services to meet the needs of clients who cannot be treated in community settings.
2. The State Hospital is experiencing significant increases in tribal court commitments for chemical dependency treatment while non-Native American admissions to the chemical dependency unit have been decreasing. During calendar year 1989, of 1,500 admissions to the chemical dependency unit 35 percent were Native Americans compared to 15 percent during previous years. The State Hospital informed the committee it is working with the North Dakota Attorney General to determine if the federal government can provide some financial assistance for treatment of Native Americans.
3. The future role of the facility is envisioned to be providing specialized diagnostic treatment and rehabilitative services for patients who cannot be served in local community systems and as a safety net for community systems. The reduction in population at the State Hospital has resulted in several buildings no longer required and the future use of the buildings needs to be determined.
4. The State Hospital is reducing admissions and redefining admission criteria as additional community services are developed. The State Hospital recommends the state shift the major service focus and funding from the State Hospital to regional human service centers and private providers, and fully develop regional intervention services, detoxification centers, and child and adolescent services. The State Hospital has reduced the number of nursing stations from 21 in seven buildings to 17 stations in five buildings which has assisted in meeting critical staff

shortages, especially registered nurses. The State Hospital plans to seek full Medicare certification for its facilities made possible by the reduction in the number of clients and the transfer of chemical dependency patients to renovated buildings.

5. The State Hospital reported \$1,581,287 was transferred from its 1989-91 appropriation to regional human service centers for community mental health and addiction services including funding for 33 positions. These funds were available as a result of savings at the State Hospital related to fewer patients.
6. Revised State Hospital 1989-91 revenue estimates of \$12.9 million will be \$1.7 million less than the \$14.6 million originally projected. The revenue shortfall is attributed to fewer Medicare and Medicaid patients in certified facilities. The revenue shortfall of \$1.7 million will be offset in part by savings in salaries and wages expenditures with a projected net deficit of \$654,000. The Department of Human Services plans to meet this deficit with moneys made available by the August 1990 general fund budget unallotment.

Private Service Providers

The committee conducted tours of mental health and addiction facilities and received testimony from private providers of services to the mentally ill and chemically dependent regarding the service delivery system in North Dakota. The following is a summary of the concerns and needs expressed by private providers:

1. Cooperation of private and public service providers is necessary in the provision of services for the chemically dependent and seriously mentally ill.
2. Private providers should be involved in the development of additional community services for the mentally ill and chemically dependent.
3. Private providers object to additional program evaluations because service providers are already evaluated by Medicare, licensing agencies, internal reviews, and Joint Commission on Accreditation of Health Care Organizations.
4. Increased funding for additional outpatient services, social detoxification contracts, and short- and long-term residential services for individuals with chemical dependency is needed.
5. Alternative state-operated, community-based services may be developed that duplicate services currently provided by private providers.

6. More structured 24-hour support services or long-term residential treatment services for individuals with mental illness or chemical addiction, including medication supervision, are needed.
7. There is lack of available psychiatric services and residential facilities.
8. Developmental disability providers may be able to assist in providing services to the seriously mentally ill.

Availability of Qualified Mental Health and Addiction Professionals

The committee, as it toured facilities and heard testimony from regional human service center directors, learned of the difficulty in recruiting and retaining qualified mental health and addiction professionals.

The committee then received testimony regarding the availability of qualified professionals to meet the needs of the human service centers, the State Hospital, and local private providers. The committee invited representatives of the Board of Higher Education to discuss the board's programs and policies in place affecting the availability of qualified professionals. The committee learned the Board of Higher Education is working with representatives of the Department of Human Services to increase the number of available qualified professionals.

The representatives of the Board of Higher Education had the following suggestions to assist in increasing the availability of qualified professionals:

1. Funding should be provided to allow existing postsecondary education programs to use telecommunications and other methods of extending on-campus programs to individuals employed in the field.
2. Funding and other methods of encouraging collaboration between Jamestown College and the State Hospital should be explored.
3. A statewide committee of faculty and human service representatives should be established to make plans and recommendations (to higher education, human services, the legislature, and others) in support of the committee's concerns.
4. Funding for stipends to students and faculty/supervisors should be provided to enhance North Dakota internships, residencies, and other experimental components of existing programs.
5. Funding should be provided for the State Hospital and human service centers for staff training and increased supervision of training experiences.
6. The Western Interstate Commission for Higher Education initiative in this area should be supported.
7. Regionally competitive salaries should be encouraged for mental health professionals and technicians, both at entry-level and mid-career, and career opportunities for mental health professionals and technicians should be improved.

The North Dakota State Mental Health Planning Council's committee on recruitment, employment, and retention presented information regarding the

availability of professionals and mental health disciplines in North Dakota summarized as follows:

1. Psychiatrists are in extremely short supply both in North Dakota and nationally.
2. Psychologists, with a doctorate in psychology and licensed in North Dakota, are in strong demand by public and private agencies.
3. Social workers, particularly masters level social workers with clinical training experience, are difficult to recruit and retain in North Dakota.
4. Psychiatric nurses with clinical experience are in short supply.
5. Counselors with a doctorate or master's degree are available but limited in their role in the mental health service system.
6. Addiction counselors are as scarce as the other mental health disciplines.
7. Occupational therapists are in short supply in North Dakota's mental health programs.

The State Mental Health Planning Council's committee also listed five factors affecting the availability of professionals:

1. Increases in the demand for and utilization of mental health services.
2. Private and public competition for mental health professionals.
3. A lack of training programs which are critical for recruitment of mental health professionals.
4. Continued funding support is key to professional retention.
5. A need to link higher education with service opportunities.

The committee received reports from the Department of Human Services and the North Dakota Board of Addiction Counselor Examiners regarding the availability and licensing of addiction counselors on Indian reservations in North Dakota. The committee learned Indian Health Service requires counseling personnel providing alcohol and drug services on the reservation to meet state licensure requirements. The Department of Human Services is working with Indian addiction counselors to provide the necessary educational training and internship experiences. Also the committee learned the Board of Addiction Counselor Examiners is considering changes to its administrative rules on licensing to establish three levels of licensure of addiction counselors with only one level requiring counselors to have a bachelor's degree, to allow individuals meeting other states' training requirements to provide counseling in North Dakota, and to allow trainees to be paid to assist individuals who cannot afford to train without pay.

A representative of the University of North Dakota School of Medicine testified at the committee's last meeting that the Department of Human Services and higher education representatives are reviewing the availability of qualified mental health professionals and have the following preliminary recommendations:

1. Begin providing more of the training of University of North Dakota psychiatric residents at the State Hospital, utilizing the strengths and resources of the State Hospital and the South Central Human Service Center. Initially, State Hospital and University of North Dakota facul-

ty members are developing a fourth year residency elective in forensic psychiatry that will be offered primarily at the State Hospital with some work at the State Penitentiary.

2. Develop a model role and job description for psychiatrists at the human service centers, orient and familiarize center directors with these materials, and implement a strategy that will enable each center to recruit and retain at least one full-time equivalent psychiatrist.
3. Develop an educational program that will:
 - a. Utilize interactive video telecommunications for education and clinical consultation at the State Hospital, human service centers, and other sites across the state.
 - b. Work cooperatively with the Human Services/Board of Higher Education Mental Health Committee and the State Mental Health Planning Council to expand and improve educational, recruitment, and retention efforts.
4. Establish a joint planning structure to oversee implementation of shared projects and develop long-range plans for sharing and improving the training environment.

Indian Health Service Payments

The Department of Human Services presented status reports at each committee meeting regarding the status of payments made by Indian Health Service for care provided Native Americans at the State Hospital. Approximately \$800,000 was appropriated by Congress for the federal fiscal year beginning October 1, 1989, for Indian Health Service payments of the cost of care and treatment of Native Americans at the State Hospital. The committee learned the State Hospital plans to bill and collect from Indian Health Service approximately \$400,000 during the fiscal year ending September 30, 1990. Originally, Indian Health Service agreed to only make payments for individuals committed to the State Hospital as a result of a psychiatric condition. Indian Health Service has, however, agreed to make payment for individuals whose primary diagnosis is a mental illness even if they have some dependency problems as well. The Department of Human Services is continuing to attempt to obtain additional funding for individuals primarily needing addiction services. At the last committee meeting the committee learned the State Hospital had received \$70,500 for Indian Health Service payments for services through July 31, 1990, with additional claims outstanding of approximately \$102,000.

Tour Groups

During the interim the Budget Committee on Human Services functioned as a budget tour group and visited the State Hospital, the Northwest Human Service Center, the University of North Dakota - Williston, and local developmental disability and mental illness provider facilities to hear institutional needs for major improvements and problems institutions or other facilities may be encountering during the interim.

The tour group minutes are available in the Legislative Council office and will be submitted in report form to the Appropriations Committees during the 1991 Legislative Assembly.

While at the State Hospital, the committee learned the State Hospital is consolidating services into its most functional buildings as the institution's population declines. This results in a reduction of staff time previously spent on moving between buildings for tests and other client services. The committee learned the capital improvement needs of the State Hospital total approximately \$2.3 million and include the following:

1. Finishing the Lahaug building basement to assist in centralizing laboratory and record services	\$457,000
2. Improving energy management	\$150,000
3. Demolishing buildings	\$477,500
4. Repairing institutional roads	\$185,000
5. Completing asbestos removal	\$700,000

Recommendations and Conclusions

The committee considered but does not recommend a bill draft that would have expanded the definition of mental health professional to include a counselor licensed under Chapter 43-47. The committee believes that consideration should be given by the 1991 Legislative Assembly to change the definition of a mental health professional to allow certain counselors to participate in the mental health commitment process. The committee expects representatives of the North Dakota Board of Counselor Examiners, after further study and consideration, to submit appropriate legislation during the 1991 Legislative Assembly.

The committee recommends House Concurrent Resolution No. 3001 for a Legislative Council study during the 1991-92 interim of alternative uses of the State Hospital and a monitoring of the establishment of community programs for the seriously mentally ill and chemically dependent.

In addition, the committee recognizes adequate community services for the mentally ill and chemically dependent have not been developed; however, the committee supports the provision and continued development of community services as an alternative to the admission to the State Hospital to the extent appropriate.

HUMAN SERVICE DELIVERY SYSTEM STUDY

The committee and the Budget Committee on Long-Term Care jointly studied the human service delivery system and the details of the study are contained in the report of the Budget Committee on Long-Term Care. The committees recommend Senate Bill No. 2033 encouraging voluntary establishment of multicounty social service districts and appropriating \$250,000 from the general fund for financial incentives and costs of developing the districts.

ORGAN AND TISSUE TRANSPLANT STUDY

Senate Concurrent Resolution No. 4014 directed a study, with private and public sector involvement, of the governmental policy regarding organ and tissue

transplant policy setting and cost reimbursement. Organ and tissue transplants are becoming a more frequent procedure in the United States as medical technology advances which increases survival rates, the number of transplant recipients, and the number of transplant centers in operation. For certain end-stage organ and tissue diseases, transplantation is the only treatment available. However, organ and tissue transplants are limited both by the availability of transplantable organs and tissues and the fiscal resources available due to the high cost of transplant procedures.

The resolution indicates that because several state agencies and other associations are involved in transplant policy decisions and financial reimbursement for transplant procedures the need exists for a coordination of efforts among the agencies and associations.

North Dakota Organ Donation Procedures

The committee reviewed organ donation procedures in North Dakota. The 1989 Legislative Assembly passed Senate Bill No. 2055, which adopts the Uniform Anatomical Gift Act. This Act establishes procedures relating to the donation of organs as follows:

1. Establishes conditions and requirements regarding how anatomical gifts may be made.
2. Establishes procedures by which an anatomical gift may be revoked or objected to.
3. Authorizes a coroner or local health official to remove organs or tissues under certain circumstances.
4. Prohibits the sale or purchase of anatomical parts.
5. Provides for the coordination of procurement and utilization of anatomical gifts by hospitals and procurement organizations in the region.
6. Adopts the "required request" method relating to organ procurement, that establishes procedures for the request of next of kin for consent to an anatomical gift if death of a patient occurs or is deemed to be imminent in a hospital.

Any individual in North Dakota, 18 years or older, may become an organ or tissue donor by completing a document of gift. A document of gift is defined as a card, statement attached to or imprinted on a motor

vehicle operator's license, a will, or any other writing used to make an anatomical gift. Under current law, a signed drivers license with a "donor" designation is a valid document of gift. A donor may restrict the parts donated by indicating so on the document of gift; however, if a donor makes an anatomical gift of a specific part and does not restrict donating other parts, it is not a refusal to give other parts and a family member may authorize additional anatomical gifts after the donor's death or a coroner or hospital official may take additional parts under certain circumstances.

An organ donor is charged medical costs related to the donor's medical treatment up to the point at which brain death of the donor is declared. Costs incurred after brain death for the purposes of maintaining and procuring the organs or tissues are charged to a separate account which is later billed to Medicare or an organ procurement organization.

Financial Assistance for Transplant Procedures

The committee reviewed state agency and program policies regarding transplantation reimbursement as well as transplants covered by Medicare and private health insurance companies in North Dakota. Presented below are the state agencies that provide reimbursement for eligible individuals for the following transplant procedures:

1. Department of Human Services
Medicaid - heart, heart/lung, liver, kidney, bone marrow, pancreas, and cornea
Crippled Children's Services - cornea
2. Comprehensive Health Association of North Dakota (CHAND) - heart, liver, kidney, bone marrow, and others if approved specifically by the CHAND Board
3. Public Employees Retirement System - heart, heart/lung, lung, liver, kidney, bone marrow, and cornea
4. Workers Compensation Bureau - heart, heart/lung, and lung in law enforcement officers and firemen

The committee learned that for fiscal year 1984 through fiscal year 1989 North Dakota state agencies have paid for the following transplant procedures:

Agency Program	Type of Transplant	Number	Cost
Department of Human Services:			
Medicaid	Heart	1	\$ 219,700
	Liver/kidney	1	25,000 ¹
	Bone marrow	1	29,914
	Kidney	4	89,152
	Cornea	10	39,430
Crippled Children's Services	Bone marrow	1	14,000
Comprehensive Health Association of North Dakota	Liver	1	88,978
	Kidney	6	47,674
	Bone marrow	1	171,178
	Cornea	1	4,278
Public Employees Retirement System		0	0
Workers Compensation Bureau	Heart	2	717,000
Total		29	\$1,446,304²

¹ Estimate.

² Approximately \$120,000 of this amount is from the state general fund.

The federal Medicare program provides organ transplant coverage to persons over the age of 65, individuals who have received disability coverage under Social Security for at least 24 months, and persons with end-stage renal disease (kidney). Organ and tissue transplants covered by Medicare include heart, kidney, cornea, bone marrow, and liver transplants for Medicare-eligible children under the age of 18 with certain end-stage liver disease.

Although most private insurance companies do provide coverage for certain transplant procedures, the actual health insurance contracts determine which, if any, transplant procedures are covered under private health insurance plans. Blue Cross Blue Shield of North Dakota covers heart, heart/lung, liver, bone marrow, pancreas, kidney, and cornea transplants.

Cost of Transplants

The committee learned the range of average costs of the various transplant procedures are as follows:

Liver transplant	\$135,000 - \$238,000
Heart transplant	\$ 57,000 - \$110,000
Pancreas transplant	\$ 30,000 - \$ 40,000
Kidney transplant	\$ 25,000 - \$ 30,000
Cornea transplant	\$ 4,000 - \$ 7,000

Other States' Reimbursement Systems

The committee reviewed other states' reimbursement systems for organ and tissue transplants and received detailed reports on Oregon and Michigan responses to organ transplant issues. The 1989 Oregon Legislative Assembly revised Oregon's Medicaid program to provide more basic health care to a greater number of people. The Michigan Legislature, in 1986, established the Michigan transplant

policy center which studies the societal issues related to organ transplantation.

Considerations and Recommendations

In its study of transplantation issues, the committee considered the following:

1. The limited number of donor organs available.
2. The consistency of state government agencies and programs in reimbursing for transplant procedures.
3. The high cost of transplants which limits the ability of the vast majority of North Dakotans to have the financial resources available to pay for a transplant.
4. The amount of regulation and control of health care facilities establishing or expanding transplant centers.

In an effort to assist in making more organs and tissues available for transplants, the committee considered but does not recommend a bill draft that would have established an alternative method by which organs and tissues could be procured for transplant—the "presumed consent" method. Current North Dakota law mandates the "required request" method be used to assist in obtaining organs and tissues for transplant. The "required request" method requires hospitals to ask a decedent's next of kin, if the decedent is not a designated donor, to consider organ or tissue donation. If the next of kin consents to the donation, the hospital may take the organs or tissues for transplant. The "presumed consent" method would have provided that a hospital could take organs or tissues for transplant without the next of kin's approval unless the decedent during the decedent's lifetime had requested not to be an organ donor. Currently, Georgia, Florida, and Michigan use the "presumed consent" method of donation for corneas. Although these states' statutes are not as broad as the bill draft would have provided,

the statutes in Georgia, Florida, and Michigan have been upheld by appellate courts in those states as a legitimate exercise of legislative authority in the pursuit and preservation of public health.

In an effort to assist in providing that more North Dakotans have the financial ability to pay for a transplant if needed, the committee considered but does not recommend a bill draft that would have required health insurance contracts issued in the state to provide coverage for nonexperimental transplant procedures.

In order to regulate health facilities conducting organ and tissue transplants in North Dakota, the committee recommends Senate Bill No. 2030 that requires any health care facility to receive Health Council approval through the certificate of need program before the facility establishes or expands an organ or tissue transplant center in North Dakota. However, the committee recognizes that if the 1991 Legislative Assembly approves a bill to repeal the certificate of need program the Legislative Assembly will not pass this bill.

Because state government has a number of agencies and programs that provide reimbursement for transplant procedures, the committee recommends Senate Bill No. 2031 that establishes transplantation guidelines for state agencies and programs. The committee's intention is to provide consistent transplant payment policies among North Dakota state government agencies. The following is a summary of the key provisions of the bill:

1. Creates a legislative policy statement on organ and tissue transplantation which supports non-experimental organ and tissue transplants but, because of the increasing costs of transplants, provides that the state needs to develop a transplant policy to guide the state's effort in this area. The Legislative Assembly authorizes the State Health Council to develop, implement, and oversee an organ and tissue transplant policy in North Dakota.
2. Requires any special committee of the State Health Council considering organ or tissue transplantation issues to have as one of its members a transplant recipient.
3. Provides the State Health Council with the following additional duties and responsibilities:
 - a. To establish and maintain a list of approved transplant procedures for which state agencies and programs may provide reimbursement.
 - b. To establish the maximum amount that a state agency, department, or bureau may pay for each type of transplant procedure.
 - c. To designate transplant centers that are eligible to receive reimbursement from state agencies or programs for transplant procedures.
 - d. To require designated transplant centers to provide to the State Health Council information and statistics regarding center procedures, staff, and outcomes.
 - e. To recommend the priority of funding transplant procedures if an agency's budget

is not adequate to cover all obligated medical costs and services.

- f. To monitor hospital and organ procurement organization agreements regarding the sharing of donated organs and tissues.
 - g. To promote increased organ and tissue donations by conducting educational programs and by developing recommendations for legislation.
 - h. To report biennially to a committee of the Legislative Council on the status of organ and tissue transplantation in North Dakota.
4. Requires that the following state agencies and programs, which provide reimbursement for transplants, must follow the transplant guidelines established by the State Health Council:
 - a. Department of Human Services.
 - Medicaid program.
 - Crippled Children's Services.
 - b. Comprehensive Health Association of North Dakota.
 - c. Public Employees Retirement System.
 - d. Workers Compensation Bureau.

Based on estimates made by the State Department of Health and Consolidated Laboratories, the fiscal impact of the recommended bills ranges from \$48,780 per year to \$385,758 per year depending on the extent of research conducted on transplant issues and the methods used for promotional and educational activities. The \$48,780 amount includes a .5 FTE position to conduct transplantation studies for the State Health Council and to carry out other Health Council directives, a .25 FTE position to design and maintain a system for collecting transplantation data, and a .5 FTE health education coordinator position to oversee the educational program and work with Lifesource (an organ procurement organization in Minnesota) to distribute transplantation information. Costs may increase up to \$385,758 if outside consultants are needed for Health Council transplantation studies and if transplantation promotional activities are conducted through a private advertising firm using billboards, radio, television, and newspapers.

CHILD CARE STUDY

Senate Concurrent Resolution No. 4030 directed a study of child care issues and needs, including the feasibility and cost of providing child care support to low income working families.

The resolution states a study is needed because child care is important for the growth and development of North Dakota's children, for the strength and well-being of North Dakota families, and for the recruitment and retention of qualified employees for North Dakota businesses.

Child care forums held throughout North Dakota in October 1988 by the Department of Human Services identified the following areas of concern relating to child care in North Dakota:

1. Assistance to low income families for child care to enable these families to remain free of the welfare system.

2. Latchkey children - early elementary aged children who return home to empty houses after school.
3. Accessible and affordable child care in preschool facilities.
4. Care for special needs children, for example, developmentally disabled, handicapped, and those at risk to abuse.
5. Child care needs for dependents of college students.
6. Child care needs for dependents of high school students.
7. Adequate resources to provide child care and preschool facility licensing and training for providers.
8. Incentives for private employers to provide child care services for their employees and for child care providers to address startup and renovation expenses to meet state minimum standards.

Background

An estimate made by the Children's Defense Fund, a national nonprofit organization, indicates 61,000 children in North Dakota are five years old and younger. State-licensed providers provide care for approximately 20,000 children while 12 federal Headstart programs in North Dakota provide services to over 1,400 children for approximately four hours per day. Latchkey programs provide care for school-aged children during the hours before and after school. Although a complete survey on the number of latchkey programs in North Dakota was not available, latchkey programs in Bismarck/Mandan, Fargo, Grand Forks, and Minot provide services to 749 children.

The committee reviewed legislation passed by the 1989 Legislative Assembly relating to child care and current North Dakota law regulating child care facilities and child care providers. In addition, the committee reviewed federal programs relating to child care including Headstart, child care food programs, social services block grants, and the child and dependent care tax credit.

The committee reviewed child care assistance programs in North Dakota. Based on a study of licensed child care providers conducted by the Department of Human Services in November 1989, the average cost of child care in North Dakota was \$12.85 per day, or based on a 21-working-day month costs averaged \$270 per month. The following child care assistance programs are available from the state through the Department of Human Services:

1. Recipients of aid to families with dependent children (AFDC) are allowed to deduct from other earnings prior to computing their AFDC payment up to \$200 per month for child care.
2. Recipients of AFDC in training programs receive direct payments for child care of up to \$200 per month.

3. Recipients of AFDC no longer eligible for AFDC payments are eligible for up to 12 months of child care assistance of up to \$200 per month.
4. The refugee assistance program pays up to \$200 per month for a refugee family's child care expenses for a maximum of 40 days while the parents are seeking employment.
5. The prime time day care program provides child care for children at risk while the parents are attending counseling sessions or receiving therapy.
6. The crossroads program provides child care for children of adolescents while the adolescent is attending high school or working toward a general equivalency diploma.

Findings

The committee toured the Hilltop Day Care Center at the State Hospital and the University Children's Center at the University of North Dakota. At the Hilltop Day Care Center, the committee learned that State Hospital employees receive preference for day care services; however, the center offers services to area residents also. The committee learned that the University Children's Center will be moving from its current location in Bek Hall to a new facility to be constructed soon, which will be financed in part from student fees.

The committee learned the status of establishment of a day care facility on the Capitol grounds by the Director of Institutions. Although the 1989 Legislative Assembly appropriated \$50,000 from the Capitol building fund to remodel the basement of the state office building for use as a child care facility, changes in fire inspection requirements for child care facilities restrict the establishment of a day care facility in basements; therefore, the project has been delayed until at least the 1991-93 biennium.

The committee reviewed the major provisions of the Federal Family Support Act of 1988, relating to child care, which are as follows:

1. That states provide child care to dependents of welfare parents who participate in a job opportunities and basic skills program or accept a job.
2. An authorization of \$13 million for each of fiscal years 1990 and 1991 for grants to states to improve their child care licensing and registration requirements and procedures, and to monitor child care provided to AFDC children.
3. That states, beginning April 1, 1990, guarantee child care services for 12 months following the month a family becomes ineligible for aid to families with dependent children because of increased earnings if the care is necessary for the parents' employment.

The committee learned that the Department of Human Services did implement the child care requirements included in the Act within the time limits specified. The schedule below compares 1989-91 funding for the child care provisions of the Act to the requested 1991-93 amounts.

	Total	Federal	General Fund	Other Funds
JOBS CHILD CARE				
1989-91 appropriation	\$2,466,552	\$1,687,571	\$ 647,897	\$131,084
1991-93 budget request	5,029,548	3,649,233	1,140,330	239,985
Net increase	\$2,562,996	\$1,961,662	\$ 492,433	\$108,901
TRANSITIONAL CHILD CARE				
1989-91 appropriation	\$1,707,575	\$1,187,573	\$ 428,900	\$ 91,102
1991-93 budget request	2,607,142	1,891,981	590,824	124,337
Net increase	\$ 899,567	\$ 704,408	\$ 161,924	\$ 33,235

The committee received testimony from the Department of Human Services regarding federal child care legislation and the need for state-supported child care assistance for low income families. Testimony was also received from child care providers and child care consumers regarding the need for child care assistance for college students and the financial distress many child care providers are experiencing.

Pending Federal Legislation

The committee, at each of its meetings, was presented an update on the status of federal child care legislation. Two child care proposals were being considered by Congress during the 1989-91 biennium. The first proposal was the Act for Better Child Care passed by the Senate in June of 1989 and the other was the Early Childhood Education and Development Act of 1989 passed by the House in October 1989.

The Act for Better Child Care provides funding to families for child care services based on a sliding fee scale and to the states to improve the quality and availability of child care. The bill expands and makes refundable the dependent care tax credit, expands the earned income tax credit, and establishes a child health insurance credit. In addition, the bill provides for expanding the Headstart program and requires states to establish child care standards.

The Early Childhood Education and Development Act provides funds to the states through Title XX funding to expand Headstart and other early childhood development programs including school-related child care. The bill expands the earned income tax credit and phases out the dependent care tax credit for families with incomes in excess of \$70,000. In addition, the bill provides that any state receiving Title XX funds for child care must offer a child care certificate program and providers must meet the state and local standards.

The latest action reported to the committee was that the bills were in conference committee. (After the final committee meeting, but prior to the Legislative Council meeting, Congress passed child care legislation. The legislation establishes two child care block grant programs that provide funding for child care services to improve the availability and quality of child care. The legislation also expands the earned income tax credit, creates a supplemental tax credit for newborns, and creates a child health care tax credit.)

Conclusion

Because of significant changes that may result from federal child care legislation and the uncertainty of the outcome of that legislation, the committee does not make any recommendations regarding its study of child care.

BUDGET COMMITTEE ON LONG-TERM CARE

The Budget Committee on Long-Term Care was assigned three study areas. Senate Concurrent Resolution Nos. 4041 and 4073 and Section 31 of House Bill No. 1001 directed a study of in-home and community-based services for the elderly and disabled. House Concurrent Resolution No. 3009 directed a study of the method of reimbursing property costs for nursing home care. Senate Concurrent Resolution No. 4047 directed a study of the state's implementation of changes required by recently enacted federal Family Support and Medicare Catastrophic Coverage Acts. In addition, the Budget Committee on Long-Term Care and the Budget Committee on Human Services conducted a joint review of alternatives for restructuring the human service delivery system in North Dakota at the request of the Legislative Council chairman.

Committee members were Senators Corliss Mushik (Chairman), Clayton A. Lodoen, Donna Nalewaja, Rolland W. Redlin, Larry J. Robinson, Bryce Streibel, and Russell T. Thane and Representatives Ronald A. Anderson, Judy L. DeMers, Patricia DeMers, William G. Goetz, Brynhild Haugland, Diane Larson, Rod Larson, Bruce Laughlin, Clarence Martin, Dagne B. Olsen, Cathy Rydell, Kit Scherber, W. C. Skjerven, and Gene Watne.

The report of the committee was submitted to the Legislative Council at the biennial meeting of the Council in November 1990. The report was adopted for submission to the 52nd Legislative Assembly.

STUDY OF IN-HOME AND COMMUNITY-BASED SERVICES FOR THE ELDERLY AND DISABLED

Senate Concurrent Resolution Nos. 4041 and 4073 and Section 31 of House Bill No. 1001 directed a study of the delivery of in-home and community-based services including exploring alternative methods to make services more affordable, monitoring payments made by the Department of Human Services through the service payments to the elderly and disabled (SPED) and long-term care programs, and the impact of providing exemptions to minimum wage and hour standards for individuals providing services.

The reasons cited for the study include that the state is providing significant state resources for the SPED and long-term care programs; cost-effective, affordable in-home and community support services assist in reducing premature admissions to long-term care facilities; and the case mix rate equalization long-term care reimbursement program, beginning on January 1, 1990, needs to be monitored so that any necessary changes can be presented to the 1991 Legislative Assembly.

1989-91 Biennium Appropriations

Following is a summary of the adjusted 1989-91 appropriation for the SPED program:

Description	Total Funds	General Fund
1989-91 appropriation	\$5,937,800	\$5,637,800
Less: December 1989 budget reduction	(1,670,000)	(1,670,000)
Plus August 1990 budget unallotment	785,000	785,000
Total 1989-91 adjusted budget	\$5,052,800	\$4,752,800

In addition, a total of \$3,208,959 was appropriated for the Medicaid waiver program for in-home and community-based services for the 1989-91 biennium, including \$1,008,175 from the general fund.

Department of Human Services' Status Reports

The committee received Department of Human Services' status reports on the SPED and Medicaid waiver programs at each meeting. The committee learned that under the current Medicaid waiver program the number of participants is capped for each federal fiscal year; at 514 for fiscal year 1990 and 560 for fiscal year 1991. This ceiling limits access to the program as the maximum number of participants each year cannot be exceeded regardless of the length of individual participation in the program.

In addition, the committee learned that because of higher than expected demand for services and funding reductions individuals are placed on a waiting list for services or in a "SPED program pool." The Department of Human Services is working with an in-home and community-based service task force to study the most efficient and effective way for eligible persons in the "SPED program pool" to access services. Currently individuals exit the SPED program pool based on the longest waiting period. The representatives of the Department of Human Services said options for prioritizing how persons exit the SPED program pool include:

1. Highest priority to clients at greatest risk of nursing home admission;
2. A high priority to residents of nursing homes that could be discharged with available in-home and community-based services; and
3. Lowest priority to a person whose needs may be best met in a nursing home.

As a result of testimony from personnel of the Department of Human Services in December 1989 regarding proposed budget reductions as a result of the tax referrals, the committee requested the chairman of the Legislative Council to urge the Department of Human Services, in making budget reductions resulting from the referrals, to attempt to reduce the impact of the proposed reductions on persons served by the SPED program and vulnerable children. At the time of the request the department had planned to reduce the SPED program by \$3 mil-

lion. As a result of an Attorney General's opinion that allowed the Governor to use \$1,330,000 from the budget stabilization fund for this program, the reduction was changed to \$1,670,000.

Department of Human Services' Recommendations

The study resolutions assigned to the committee regarding in-home and community-based services required the committee to consider a number of points and the Department of Human Services' response to those areas are as follows:

1. The government payment of indirect costs of in-home and community-based services - The department recommends the state not pay these costs and suggests any additional available funds be used to provide in-home and community-based services to additional low income elderly and disabled persons.
2. Reducing administrative costs by greater utilization of clients and their relatives in the management and supervision of services - The department has reduced case management contacts, documents the availability of family members to provide services, and attempts to not provide services family members are able to provide.
3. Feasibility of using long-term care facility personnel for providing in-home and community-based services - The department reported currently long-term care facility personnel may deliver in-home and community-based services but long-term care facilities have difficulty recruiting and maintaining the paraprofessional staff who provide the service. Also, the long-term care facilities provide health care while the emphasis of in-home and community-based services is the provision of social services.
4. The need for and feasibility of providing exemptions to minimum wage and hour standards to persons providing companionship, family home care, and personal care services - The department said the current process and minimum wage and hour standard exemptions are effective and prefers changes not be made affecting the self-employment status of individuals providing contract services.
5. Preadmission assessments of individuals prior to nursing care facility admission - The department supports informing persons of in-home and community-based services to postpone or prevent institutionalization and said the current structure of assessing the needs of persons applying for nursing care does not appear to be effective in avoiding or delaying admissions. The department said senior service centers could provide information on available in-home and community-based services but the workers at the centers may not have the necessary training to assist clients in making service choices.
6. Case management - The department recommends the following:
 - a. Establishment of a case management delivery system that makes maximum use of the informal network (parents, family,

friends, neighbors), for meeting the ongoing case management activities and needs of clients.

- b. Provision of incentives within case management for coordination leading to greater utilization of the informal network.
- c. Establishment of a short-term or crisis case management component to allow private pay individuals to purchase case management as needed.
- d. Provision of manageable caseloads for case managers.

Other Testimony

The North Dakota Long-Term Care Association testified regarding preadmission assessments of individuals accessing nursing care facilities and the use of employees of facilities to provide in-home and community-based services. The Long-Term Care Association recommended repeal of the state law requiring preadmission assessments contained in North Dakota Century Code Chapter 50-24.3.

The Long-Term Care Association surveyed nursing home personnel conducting preadmission assessments and those individuals made the following observations:

1. Only two percent of persons seeking nursing home placements select community alternatives.
2. Experience shows that when families make an application for a nursing home admission, it is only after months and sometimes years of providing care for the individual.
3. Preadmission assessment, as it is currently being administered, is occurring too late in the caregiving process.
4. Preadmission assessment is not effective as a gatekeeper service.
5. As service options are not available due to funding constraints, some people are informed of services which are not available.

The committee also received a report from the North Dakota Association for Home Health Services regarding a survey of home health agencies. There are currently 35 home health agencies in North Dakota providing a range of home health services with approximately 56 percent of the care paid for by medical assistance and 31 percent paid for by patients. Association concerns included that the reimbursement for services provided is not adequate in some cases, reimbursement levels result in low wages and high employee turnover, and the large amount of staff training required for home health providers by the federal government.

Representatives of organizations representing individuals with head injuries, Alzheimer's disease, and other disabilities testified on the need for in-home and community-based services to assist these individuals to remain in their homes rather than in nursing care facilities.

The committee reviewed the licensure of home health agencies in North Dakota. The Department of Health and Consolidated Laboratories has the responsibility to license home health agencies and requires agencies to provide certain services includ-

ing skilled nursing and at least one other therapeutic service; to maintain adequate documentation that qualified personnel are available to provide services; and to ensure that all home health aides are properly trained and function under adequate supervision of either a supervising physician or registered professional nurse. The committee also received information regarding the location of and services provided by North Dakota home health agencies.

The committee reviewed wage and hour standards for home care and companionship services. Under federal and state law, a person employed to provide companionship services for individuals who are unable to care for themselves is exempt from wage and hour standards if the work does not require and is not performed by trained personnel and general household work does not exceed 20 percent of the total weekly hours worked. North Dakota law exempts from any wage and hour standards established by the State Labor Commissioner companionship services of up to eight hours with respect to services provided between the hours of 10:00 p.m. and 9:00 a.m. Family home care and companionship services are specifically exempt from any overtime premium established by the State Labor Commissioner.

Representatives of the North Dakota County Social Service Directors Association testified that the preadmission assessment function needs to occur at a much earlier time in the lives of the elderly or disabled person to be beneficial and the current process is not resulting in persons accessing in-home and community-based services. The County Directors Association recommended that funds used for preadmission assessments be used to fund in-home and community-based services to make services available on a more timely basis.

Recommendations

Although the committee is not recommending any bills on this subject, the committee expressed support for any legislation, if introduced in the 1991 Legislative Assembly, to repeal the preadmission assessment program and the committee encourages the Department of Human Services through senior agencies and senior centers to provide information on in-home and community-based services.

LONG-TERM CARE PROPERTY COST REIMBURSEMENT STUDY

House Concurrent Resolution No. 3009 directed a study of the current and alternative methods of reimbursing property costs in reimbursement rates for nursing home care including reviewing methods used in other states which would eliminate consideration of actual interest and depreciation costs.

The study was requested because the property cost reimbursement component was not reviewed during the establishment of the case mix reimbursement system. Because the case mix system requires rate equalization between private and public payors, should the property cost reimbursement not reflect facilities' costs there is no opportunity for facilities to recapture those costs. Also representatives of the facilities believe the limitations on property cost

reimbursement are no longer necessary and create a financial hardship on some facilities.

Case Mix Reimbursement

The 1987 Legislative Assembly passed legislation requiring the establishment of a prospective case mix Medicaid reimbursement system for long-term care facilities under which rates are established based on the condition and needs of the residents and private pay patients must be charged the same amount as that charged Medicaid patients. The committee received periodic reports from the Department of Human Services regarding the establishment of the case mix reimbursement system summarized as follows:

1. As a result of the December 1989 tax referrals, funding for the case mix reimbursement system was reduced by a total of \$936,000 from the general fund, with corresponding reductions in federal and county funds of \$2,429,000 for a total Medicaid funding reduction for case mix reimbursement of \$3,365,000. These reductions consisted of reducing the cost containment efficiency incentive from a maximum of \$2.60 per resident per day to \$1.85 per resident per day; the elimination of the operating margin component which was based on three percent of direct care related costs; and reducing the case mix phase in for facilities with costs exceeding limitations.
2. A total of 39,125 classification reviews were completed through August 1990, with 60 classifications appealed. Of the 60 appeals, 20 classification determinations were affirmed, 27 changed, and 13 determinations reviewed and slightly modified with no resulting change in classification.
3. A Case Mix Advisory Committee established to review the implementation of the case mix reimbursement system has not found any significant problems or findings to date regarding the implementation of the program and plans no recommended changes to the 1991 Legislative Assembly.
4. The Department of Human Services has requested, in its original 1991-93 budget request, funds to restore the cost containment efficiency incentive at a maximum of \$2.60 per resident per day at a total cost of \$962,000 and funds to restore the operating margin component at three percent of direct care related costs at a total cost of \$2,660,000 for a total of \$3,622,000, with approximately \$841,000 from the state general fund.

Property Cost Review

The committee received information on the current property cost reimbursement method which provides for interest and depreciation reimbursement to a facility based on the cost of the facility, limited to the lowest of fair market value, current reproduction cost of the facility, or the previous owner's depreciation basis.

The committee found the following regarding property cost reimbursement:

1. The Department of Human Services pays approximately \$6 million per year, through the Medicaid program, for property-related costs of nursing care facilities which represents approximately 11.5 percent of the total costs of long-term care.
2. The daily per diem property rate ranges from 47 cents per day to \$16.11 per day with an average property rate of \$4.17 per day.
3. The Department of Human Services believes the current property cost reimbursement system needs to be reviewed, and any new system selected should ensure the continued viability of the nursing home industry, discourage unnecessary facility sales, and be fiscally acceptable.
4. Case mix legislation mandated that the Department of Human Services establish rules to discourage the sale of nursing homes.
5. Depreciation is limited to the previous owner's cost in an effort to limit nursing home costs for private and public pay patients.
6. A new property cost reimbursement system will likely require an increase in property payments to facilities.

The committee reviewed property cost reimbursement methods in other states' Medicaid systems which review included the following points:

1. Several states continue to reimburse property costs based on depreciation over the estimated useful life of the facility and on actual interest costs.
2. Several states including Minnesota, Idaho, Colorado, Connecticut, Florida, and Illinois reimburse property costs based on a rental payment system.
3. The methods of determining the rental payment varies from state to state, is usually adjusted for inflation, and typically attempts to provide a return on investment for the facility's owner.

In addition, the committee learned the average occupancy rate for nursing care facilities in North Dakota for August 1989 was 95.3 percent compared to 95.8 percent for all facilities in September 1983.

Testimony

Representatives of the Long-Term Care Association testified on the need for a property cost reimbursement study and presented the following prioritized listing of reimbursement needs of the long-term care industry:

1. Restoration of the operating margin component of the case mix reimbursement system and cost containment efficiency incentives.
2. Implementation of a fair rental reimbursement system for property costs.
3. Full funding for leased facilities and for facilities that have changed ownership.
4. A return on investment.
5. Deletion of the recapture of depreciation provisions.

In addition, the Long-Term Care Association presented information on the costs of upgrading physical plants of nursing care facilities to meet the

requirements of the Omnibus Budget Reconciliation Act of 1987 which requires physical plant and personnel changes to upgrade intermediate care facilities to meet nursing facility standards. The association estimated the cost to upgrade the physical plant of 32 intermediate care facilities in North Dakota at \$20,285,000.

The Department of Health and Consolidated Laboratories testified on the procedures for upgrading physical plant facilities pursuant to these requirements. The committee learned the department has required facilities to present a plan for upgrading by October 1, 1990, with completion of any required construction at a later negotiated date. Physical plant changes required include doorways, safety systems, and ventilation systems.

Other nursing care providers and facility owners testified on the needs of their facilities regarding property cost reimbursement. A facility owner that leases a facility to a nursing care provider objected because the Department of Human Services does not recognize increased lease costs to allow owners an adequate rate of return on the property. The committee learned the Benedictine Health Care System recently purchased six facilities from Beverly Enterprises and its interest and depreciation reimbursement is limited to the previous owners' basis. The Benedictine Health Care System estimated it will lose approximately \$930,000 per year in reimbursement as a result. Representatives of the Benedictine Health Care System asked that the committee provide relief from this limitation by a change in state law.

Optional Supplementation and General Assistance Payments for Basic Care Facilities

The committee as a part of its study of long-term care facilities learned the Department of Human Services eliminated state matching for the remainder of the 1989-91 biennium for county general assistance and optional supplementations for individuals residing in basic care facilities effective January 1, 1990, with a general fund budget reduction of \$1.7 million. The original 1989-91 appropriation was \$2.3 million from the general fund.

At its last meeting the committee was advised that the Department of Human Services allocated an additional \$300,000 from the August 1990 general fund budget unallotment allocation to restore payments for optional supplementation and general assistance matching for individuals in basic care facilities beginning January 1, 1991, at 25 percent of the counties' costs. The committee learned the Department of Human Services does not plan to request funding for this program for the 1991-93 biennium.

Licensing of basic care facilities was transferred from the Department of Human Services to the State Department of Health and Consolidated Laboratories by the 1989 Legislative Assembly. Licensing is now required for facilities to operate as a basic care facility while previously licensing was permissive.

The committee received testimony from basic care providers regarding the need for state matching funding of county optional supplementation and general assistance payments for basic care residents.

Several providers said as a result of the elimination of funding by the Department of Human Services several counties have frozen reimbursement rates and some counties will not pay for any new residents entering basic care facilities.

Recommendations

The committee recommends House Bill No. 1031 changing property cost reimbursement for rate years beginning on or after January 1, 1991, requiring interest and depreciation to be reimbursed based on a facility's actual cost resulting from a good faith arms length purchase agreement with the property basis limited to the lowest of purchase price, current reproduction costs, or fair market value, without regard to the previous owner's basis.

The Department of Human Services estimated the fiscal impact of the bill, as amended, to be \$1.6 million for the 1991-93 biennium, of which \$410,000 is from the general fund. The estimate is based on the costs related to the six facilities purchased by the Benedictine Health Care System.

The committee also recommends Senate Bill No. 2032 providing a deficiency appropriation for the 1989-91 biennium to the Department of Human Services for state matching of county optional supplementation and general assistance payments for individuals in basic care facilities for the period August 1990 through June 1991 in the amount of \$481,000 from the general fund. This amount, along with the \$300,000 made available from the department's August 1990 general fund budget unallotment, provides sufficient funds for the state matching of these payments for the last 11 months of the 1989-91 biennium.

In addition, the committee recommends that the state support matching general assistance and optional supplementation payments for individuals in basic care facilities at a 50 percent level during the 1991-93 biennium and that the Legislative Council study during the 1991-92 interim the desirability of the establishment of a state basic care program including the definition of services to be provided and state, county, and federal financial responsibilities.

The committee also considered a bill draft that would have assisted the state in receiving federal Medicaid funds for personal care services provided in basic care facilities. The bill draft would have required counties to pay the entire nonfederal share of any Medicaid funds received for personal care services in basic care facilities. The committee found that even though it may be desirable to pursue Medicaid funding of personal care services it is unlikely the funding will be available and a bill draft is not necessary to obtain the funding. Therefore the committee does not recommend the bill draft.

In addition, the committee recommends the 1991 Legislative Assembly include in the Department of Human Services' 1991-93 appropriation for long-term care reimbursement, funding for cost containment efficiency incentives at a maximum of \$2.60 per patient day and an operating margin component of three percent of direct care costs.

MONITORING IMPLEMENTATION OF THE FAMILY SUPPORT AND MEDICARE CATASTROPHIC COVERAGE ACTS

Background

Senate Concurrent Resolution No. 4047 directed a study of the state's system of delivering human services in light of the recently enacted federal Family Support and Medicare Catastrophic Coverage Acts. The resolution states the most efficient, effective, and responsible method of delivering public assistance to low income families and individuals must be determined and the financial and other impacts of these Acts need to be studied. Public assistance includes integrating or coordinating educational, job training, economic development, employment, financial assistance, housing, and health care programs.

Family Support Act of 1988

The following is a summary of the major provisions of the Family Support Act of 1988:

1. **Job opportunities in basic skills (JOBS) training program** - Created to ensure that needy families with children obtain the education, training, and employment that will help them avoid long-term welfare dependence.
 - States must implement the program by October 1, 1990, and by October 1, 1992, must establish a JOBS program in every political subdivision, unless the state demonstrates that it is infeasible or unnecessary to do so.
 - States must develop a plan describing how the state will satisfy requirements concerning coordination with the private sector.
 - States must require participation in JOBS activities by all nonexempt welfare recipients (the parent or custodial relative of a child under age three is exempt).
 - States may require a parent caring for a child under age six to participate no more than 20 hours per week.
 - States must require custodial parents under age 20 who have not completed high school or its equivalent to participate in educational activities on a full-time basis.
 - States must spend at least 55 percent of their JOBS funds on target groups of individuals who are likely to become long-term welfare recipients. Target groups include families in which the custodial parent is under age 24 and families who have received assistance for more than 36 of the preceding 60 months.
 - States must guarantee child care if such care is required for a welfare parent to participate in JOBS activities and child care must meet applicable state and local standards.
 - For fiscal years 1990 and 1991 \$13 million is authorized for states to improve their child care licensing and registration requirements and to monitor child care provided AFDC children. States are required to provide 10 percent matching funds.

2. Child support enforcement.

- Requires, by July 1, 1990, automatic withholding of child support from an absent parent's paycheck.
- Requires, for welfare families, that the first \$50 of a monthly child support payment by the absent parent be passed on to the custodial parent without being counted as income for determining eligibility.

3. Transitional child care, transitional Medicaid, and AFDC changes.

- Transitional child care - Requires (as of April 1, 1990) states to guarantee child care services for 12 months following the month a family becomes ineligible for public assistance.
- Transitional Medicaid coverage - Requires continued Medicaid coverage for 12 months for families who received AFDC benefits but have become ineligible because of increased employment hours or earnings. This provision sunsets on September 30, 1998.
- Unemployed parent coverage - Requires states to operate an AFDC program for two-parent families (AFDC-UP) to provide AFDC and Medicaid benefits to impoverished two-parent families in which the principal wage earner is unemployed.

4. Financing.

- Creates a capped federal entitlement (not subject to appropriations) of up to \$600 million in fiscal year 1989; \$800 million in fiscal year 1990; \$1 billion in fiscal years 1991, 1992, and 1993. Federal matching is 90 percent (up to the state's fiscal 1987 allocation for the work incentive (WIN) program) and nonadministrative personnel costs for staff working in the JOBS program are matched at the greater of 60 percent or the state's Medicaid match rate. Administrative expenses are matched at 50 percent.

Medicare Catastrophic Coverage Act of 1988

The Act would have increased the Medicare benefits, limited client liability for deductibles and copayments to a set amount each year, increased home health services coverage, increased respite care coverage, and provided prescription drugs with unlimited annual coverage after deductibles. These provisions were repealed by Congress in 1989 as were the additional Medicare premiums and income tax liability that would have paid for the provisions.

The Act requires significant changes to the state Medicaid program that were not repealed, summarized as follows:

1. **State buy in of Medicare premiums.** States' Medicaid programs are required to pay for the cost-sharing requirements (premiums, copayments, and deductibles) of all Medicare-eligible populations with incomes below the federal poverty level. Previously the state has paid Medicare premiums for the aged and disabled under the SSI-Medicare program for in-

dividuals without sufficient work experience to qualify for Medicare benefits. The mandate will be implemented on a phase-in schedule beginning with up to 85 percent of poverty level in 1989, 90 percent in 1990, 95 percent in 1991, and 100 percent in 1992.

2. **Pregnant women and children.** The Act requires state programs to extend Medicaid coverage to pregnant women and to children, up to age one, with family incomes below the federal poverty level. Pregnant women are eligible to receive pregnancy-related services while eligible children must receive all benefits included in the state Medicaid plan and provided to cash assistance recipients. This coverage was expanded by Congress in 1989 to cover pregnant women and children up to age six at 133 percent of poverty level.

3. Long-term care program.

- a. **Spousal impoverishment** - The Act allows an individual whose spouse is in a nursing home to be allowed to retain more income, thus lessening the impact of Medicaid "spend down" requirements that would otherwise impoverish an elderly couple.

The Act also allows the noninstitutionalized spouse to retain more resources by providing that all resources held by either or both spouses are considered available equally to both spouses, excluding the couple's house and personal goods, at the beginning of institutionalization. The state must provide an assessment of the couple's joint assets at the beginning of institutionalization. The minimum level of resources to be retained by a noninstitutionalized spouse is \$12,000, but a state can raise that minimum to any level up to the federal limit of \$60,000. (North Dakota currently has a \$25,000 resource exemption.)

- b. **Asset disqualifying provision** - The Act changes the disqualifying transfer provision for determining Medicaid eligibility. Individuals can now transfer property and after 30 months become eligible for long-term care services funded by Medicaid. Previously transfers made two years prior to application were disqualified and transfers made more than two years and up to five years prior to application could be considered disqualifying if the department could prove it was done to become Medicaid eligible.

Comparison of 1989-91 Biennium Appropriations and Requested Amounts for 1991-93 Biennium

Family Support Act

The following is a comparison of the funding of the major provisions of the Act for the 1989-91 biennium and the requested amounts for the 1991-93 biennium:

	Total	Federal	General Fund	Other Funds
JOBS PROGRAM (Includes Transportation)				
1989-91 biennium appropriation	\$ 1,175,002	\$ 999,320	\$ 88,571	\$ 87,111
1991-93 biennium preliminary request	5,035,896	2,997,030	774,566	1,264,300
Net increase	\$ 3,860,894	\$ 1,997,710	\$ 685,995	\$ 1,177,189
JOBS CHILD CARE				
1989-91 biennium appropriation	\$ 2,466,552	\$ 1,687,571	\$ 647,897	\$ 131,084
1991-93 biennium preliminary request	5,029,548	3,649,233	1,140,330	239,985
Net increase	\$ 2,562,996	\$ 1,961,662	\$ 492,433	\$ 108,901
TRANSITIONAL CHILD CARE				
1989-91 biennium appropriation	\$ 1,707,575	\$ 1,187,573	\$ 428,900	\$ 91,102
1991-93 biennium preliminary request	2,607,142	1,891,981	590,824	124,337
Net increase	\$ 899,567	\$ 704,408	\$ 161,924	\$ 33,235
TRANSITIONAL MEDICAID BENEFITS				
1989-91 biennium appropriation	\$ 2,148,914	\$ 1,503,209	\$ 595,477	\$ 50,228
1991-93 biennium preliminary request	6,287,479	4,562,848	1,489,747	234,884
Net increase	\$ 4,138,565	\$ 3,059,639	\$ 894,270	\$ 184,656
UNEMPLOYED PARENT PROGRAM				
1989-91 biennium appropriation	\$ 1,600,793	\$ 1,119,787	\$ 396,797	\$ 84,209
1991-93 biennium preliminary request	5,252,520	3,811,775	1,190,250	250,495
Net increase	\$ 3,651,727	\$ 2,691,988	\$ 793,453	\$ 166,286
Total 1989-91 appropriation	\$ 9,098,836	\$ 6,497,460	\$ 2,157,642	\$ 443,734
Total 1991-93 preliminary request	24,212,585	16,912,867	5,185,717	2,114,001
Net increase	\$15,113,749	\$10,415,417	\$ 3,028,075	\$ 1,670,267

Medicare Catastrophic Coverage Act

The following is a comparison of the funding of the major provisions of the Medicare Catastrophic Coverage Act for the 1989-91 biennium and the requested amounts for the 1991-93 biennium:

1. **State buy in of Medicare premiums** - implemented September 1, 1990.

This provision provides that individuals, at or below 95 percent of the poverty level for 1991 and 100 percent for 1992, are eligible to have their Medicare premiums, coinsurance, and deductibles paid by the Medicaid program. The following is a summary of the funding comparison:

Biennium	Total Cost	General Fund Share
1989-91 projection	\$1,724,253	\$449,457
1991-93 request	2,962,848	701,593
Increase	\$1,238,595	\$252,136

The original appropriation for the 1989-91 biennium was \$4,437,019, of which \$1,210,760 was from the general fund. The estimate was revised to reflect a lower number of qualified Medicare beneficiaries, lower than estimated premiums,

and a delayed implementation date from July 1989 to September 1990.

2. **Expanded Medicaid coverage for pregnant women and children** under six years of age up to 133 percent of income poverty level - implemented April 1, 1990. The following is a summary of the funding comparison:

Biennium	Total Cost	General Fund Share
1989-91 appropriation	\$ 2,732,999*	\$ 758,088
1991-93 request	13,832,845	3,277,401
Increase	\$11,099,846	\$2,519,313

*In addition, due to expanded coverage mandated effective April 1, 1990, a total addition of \$9,094,091 is required for 1989-91, of which \$2,431,245 is from the general fund.

Department of Human Services' Progress Reports

The committee received progress reports from the Department of Human Services on the implementation of the provisions of the Family Support and Medicare Catastrophic Coverage Acts at each of its meetings. The committee at its last meeting received the following information on the program's status:

1. The job opportunities in basic skills (JOBS) training program was implemented on April 1, 1990. The program is currently on a voluntary participation basis, although mandatory participation may be required to ensure that 55 percent of JOBS funds are spent on individuals in the target groups who are likely to become long-term welfare recipients.
2. The Department of Human Services contracted with Job Service North Dakota for the training and employment-related activities with 1,041 adults receiving education under the program in July 1990.
3. The case management component was implemented on July 1, 1990, by contracting with the Office of Intergovernmental Assistance to provide case management services through the community action agency self-reliance program. At the request of the committee the chairman of the Legislative Council urged the Department of Human Services to continue development of the mandated welfare reform JOBS program utilizing a cooperative approach including the county social service agencies, Job Service North Dakota, and the community action agencies self-reliance program.
4. The transitional child care provisions were implemented on April 1, 1990, and provide for a partial payment of day care expenses for a period up to 12 months after a household loses AFDC eligibility due to an increased earned income.
5. The unemployed parent provision expanding coverage under the AFDC program was imple-

mented on October 1, 1990, and will provide for payment of AFDC payments to families meeting AFDC-eligibility criteria where the children are considered deprived due to the unemployment or underemployment of the parents. It is anticipated approximately 455 eligible families will qualify for this provision.

6. Regarding the implementation of the Medicare Catastrophic Coverage Act, congressional action in 1989 expanded the mandatory coverage for pregnant women and children. The original Act had mandated coverage for pregnant women and children up to the age of one at 100 percent of the federal poverty level beginning July 1, 1990. Congress expanded the coverage of this provision to pregnant women and children up to the age of six with incomes up to 133 percent of the poverty level.

Aid to Families with Dependent Children Program

The committee also received information on the preliminary budget and caseload information regarding the AFDC program for the 1991-93 biennium. The Department of Human Services original budget request for the AFDC program for the 1991-93 biennium includes a five percent payment increase for each year of the biennium with a total program cost of \$56.5 million, of which \$11 million is from the general fund, compared to an appropriation for the 1989-91 biennium of \$52.1 million of which \$11.7 million is from the general fund. The reduction in general fund participation in the program is due to an increased federal financial participation rate for the next biennium and increased child support enforcement collections. Federal financial participation is estimated to increase from 70 percent in 1991, to 72.75 percent in 1992, and to range from 73.18 percent to 74.04 percent in 1993.

The committee also received information comparing actual AFDC payment increases to cost-of-living increases for the period July 1980 through July 1990. Actual AFDC payments increased during the period by approximately 20.6 percent compared to an increased cost of living for the same period of 54.3 percent.

Recommendations

To reduce the gap between AFDC payment increases and cost-of-living increases, the committee recommends the 1991 Legislative Assembly consider funding increases in AFDC payment levels in excess of the five percent annual increases requested by the Department of Human Services in its 1991-93 budget request, to the extent funds are available.

In addition, because of the significant changes to human service programs and related financial impacts, the committee recommends House Concurrent Resolution No. 3002 directing the Legislative Council to monitor the implementation of the Family Support and Medicare Catastrophic Coverage Acts during the 1991-92 interim.

OTHER AREAS

In September 1990 several committee members accompanied the northeastern budget tour group as it toured the State Developmental Center in Grafton. Please refer to the report of the Budget Section regarding the tour group. The tour group minutes are available in the Legislative Council office and will be submitted in report form to the Appropriations Committees during the 1991 Legislative Assembly.

HUMAN SERVICE DELIVERY SYSTEM STUDY

The Budget Committee on Long-Term Care and the Budget Committee on Human Services conducted a joint review of alternatives for restructuring the human service delivery system in North Dakota at the request of the Legislative Council chairman. The committees met jointly during December 1989 after the December 5, 1989, tax referrals and received information regarding the impact on human service programs of the budget reductions resulting from the tax referrals.

Department of Human Services' Budget Reductions

The committees received information on the Department of Human Services' general fund budget reductions made as a result of the December 5, 1989, tax referrals. The following is a summary of the budget reductions made to the Department of Human Services' 1989-91 appropriation which totaled \$775.1 million, of which \$235.9 million was from the general fund:

Original general fund budget reduction	\$19,567,892
Less use of budget stabilization fund	(4,599,892)
Original general fund budget reduction	\$14,968,000
Less August 1990 two percent unallotment	(4,717,484)
Net general fund budget reduction	\$10,255,016

Review of Other States' Human Service Delivery Systems

The committees received a report entitled "An Overview of Social Services, Responsibilities, Programs, and Funding in North Dakota, Minnesota, Montana, South Dakota, and Iowa." The report includes information and comparisons on the delivery of social services in these states, including information on social service budgets, operational structures, caseloads, staffing, and per capita costs.

The committees found all the states reviewed have a social service director appointed by the Governor, all except Minnesota have a Social Services Advisory Board, and all have regional facilities or institutions under the social service agency. In addition, all of the states reviewed have county welfare offices, although South Dakota has county offices staffed by state employees. In Montana 12 of the 56 counties have state-administered offices.

Department of Human Services' Recommendations

The committees received the Department of Human Services' recommendations regarding the delivery of human services which are summarized as follows:

1. Eight regional human service centers should continue to provide a core of basic "essential" services, with four or five of the centers providing one or more additional specialized services.
2. The department supports a social service delivery system which includes county-administered programs as its core. Legislation should be introduced to encourage two or more counties to join together in the administration and delivery of social services. A master plan should be developed by the counties and association of county agencies and officials to help draw clusters of counties together.
3. The Legislative Assembly should provide statutory and budgetary flexibility to allow the State Developmental Center and the State Hospital, as they continue to reduce their resident and patient census, to seek actively to market their services and other capabilities to local and interstate markets. Also the department should be given clear budgetary flexibility to transfer State Hospital positions and fiscal resources to human service centers.
4. The department should develop a comprehensive quality assurance system which includes standards for client, patient, and staff safety, for credentials of service delivery staff, to measure accomplishment of organization goals and objectives, to measure management quality and procedures, and to measure client/patient service results.
5. Locally controlled case management services for children and adolescents at risk of out-of-home placement should be expanded to cover the whole state.
6. The central office of the department should be equipped to carry on a formalized and continuous strategic planning process on a comprehensive basis.
7. The central office should also be specifically authorized by statute to work with the Educational Telecommunications Advisory Council and other public and private entities to develop a strategy for department and county social service utilization, beginning in the 1993-95 biennium, of interactive telecommunications technology.
8. The department must comprehensively address, during the 1991-93 biennium, a means of reducing the stress and tendency to err which are growing in the economic assistance eligibility determination system. The department should be specifically authorized by the Legislative Assembly to set and enforce eligibility determination caseload standards.
9. The Legislative Assembly and other parties must begin to address the complex social and fiscal policy issues raised by the ever-increasing

share of the department's budget being devoted to the Medicaid and AFDC program budgets.

County Social Services Time Study

The committees reviewed the results of a county social services time study conducted for the month of May 1990 which are summarized as follows:

1. A total of 420.85 FTE social service positions were studied, providing a total of 76,287 hours of service and activity time during the month of May 1990 with 61 percent of the hours spent for the provision of client-related services and 39 percent for nonclient-related services.
2. Services were provided to a total of 13,250 individuals with 70 percent in the category of children, adults, and families with approximately 30 percent of the services provided to the aged.
3. County social services spent a total of \$930,000 on social services (35.7 percent of the total), \$902,000 (34.6 percent of the total) on economic assistance administration, and \$774,000 (29.7 percent of the total) on grants and contracts.
4. Total county employees during the month of May 1990 were 813, including 420.85 for social services, 87.44 for administration, 24.9 for child support, and 279.81 for economic assistance.

In addition, the time study information includes summary statistics for each county including information on full-time equivalent employees, hours of services, unduplicated number of clients, and expenditures by county by type of service including client demographic information regarding clients served.

Proposals and Observations Regarding Current Delivery System

Observations made by the committees and changes to the current human service delivery system considered by them are summarized as follows:

Department of Human Services issues

1. Interactive telecommunications - The Department of Human Services suggested it be provided membership on the Educational Telecommunications Council created in North Dakota Century Code Chapter 15-65, but does not plan to request funding of interactive telecommunications during the 1991-93 biennium.
2. Quality assurance - The Department of Human Services plans in its 1991-93 budget to continue current quality assurance efforts and to request an additional \$460,000 for a comprehensive quality management and attitude training program.
3. Communications and public information function - The Department of Human Services plans in its 1991-93 budget request to seek to continue its public information efforts but does not plan to request an increase for this purpose during the 1991-93 biennium. However, if the function is expanded the department suggests it be done at a cost of approximately \$112,000, to fund one additional staff person with related travel and

operating expenses and \$22,000 for a substantial increase in the size and distribution of the department's Case and Counsel magazine.

Shared county social services issues

1. Currently there are significant voluntary efforts between counties to share social work staff supervision, including the merging of county social service agencies under a single director. County social service consolidation efforts to date include:

Counties Consolidated for Social Services	Year Functions Were Consolidated
Billings, Golden Valley	1935
Bowman, Slope	1942
McHenry, Pierce	1971
McLean, Mercer, Sheridan	1974
LaMoure, Ransom	1974
Williams, McKenzie	1982
Foster, Eddy, Wells	1989

2. The state should use a technical assistance approach and create technical assistance teams providing information as well as assistance to counties to develop additional shared cooperative ventures.
3. Financial incentives should be provided counties for planning and creating fiscal efficiency and improved delivery by way of mergers of administrators, offices, or social work staff.
4. Legal agreements should be entered into between the various counties and the Department of Human Services, spelling out the fiscal incentives and long-term commitments.
5. The state should encourage, assist, or promote incentives to the counties for consolidation, rather than require the merger of smaller counties. Larger social service units may not necessarily be more efficient.
6. The state needs to make it easier for counties to share workers and develop methods of purchase, service, or sharing of positions between human service centers and county social service boards for a cost-effective method of providing specialized services to rural areas.

County social services issues

1. The state needs to be assured of quality in county social service programs to improve the counties' effectiveness and efficiency.
2. Economic assistance delivery services should be available as close to the clients as possible with adequately trained staff.
3. The state should review and evaluate the necessity for continuing current rules which have a significant workload impact on eligibility determination workers.

4. Social service staff need to be able to respond locally to emergency needs, especially in the areas of child abuse and abused women.

Mental health issues

1. A local additional mill levy should be permitted or mandated to be administered by multicounty social service agencies for new or enhanced mental health services.
2. The essential future role of the Department of Human Services should be as a facilitator/regulator and not a provider of mental health services.
3. Human service center advisory boards should be strengthened to include actual budget control for human service councils.
4. A complete continuum of services for the mentally ill needs to be developed.

Multicounty Social Service District Formation

The committees reviewed North Dakota Century Code Chapter 50-01.1 which allows the consolidation of county agencies into multicounty social service districts. This chapter was enacted in 1971 and has not been used to date to establish a multicounty social service district. The committee considered options for statutory changes to encourage the establishment of multicounty social service districts on a voluntary basis including the following provisions:

1. Appropriate funds to encourage the creation of multicounty social service districts with financial incentives.
2. Limit financial incentives to a fixed number of years.
3. Change the size of the governing board.
4. Change the membership of the governing board to require a county commissioner from each county.

The committee learned of the following concerns regarding the formation of multicounty social service districts:

1. If a single social service district office is established, it could deny client access to programs and services, and it could require additional outreach functions, increased building or rental costs, and increased travel cost to counties to cover the enlarged district.
2. Multicounty social service districts may become too large.
3. The budgeting process should be clearly defined to set deadlines to ensure that county budgets are able to be completed timely.
4. The appropriation should be sufficient to provide funds for all the counties that may be interested in such a consolidation.
5. Although counties currently are sharing services, a multicounty social service district has not been established.
6. Counties are concerned that this may be viewed as an interim step for complete state assumption of social service provision.

Recommendations

The committees recommend Senate Bill No. 2033 amending North Dakota Century Code Chapter

50-01.1 to encourage the voluntary establishment of multicounty social service districts with the following provisions:

1. Appropriates \$250,000 from the general fund to encourage the creation of multicounty social service districts with financial incentives to be based upon achieved economies of scale, adherence to caseload standards for economic assistance and social service functions, reduced administrative costs, specialized qualifications of staff, and quality of services provided.
2. Limits financial incentives to a six-year period, phased out during the last three years of that period.
3. Changes the governing board membership from seven, nine, or 11 members to up to 15 members with members appointed to three-year terms with a maximum of three consecutive three-year terms.
4. Provides that members of the governing board are to be selected from each participating county based on the ratio that county's population bears to the total population of a multicounty district with each county represented on the board by at least one county commissioner.

The committees recommend the \$250,000 general fund appropriation contained in Senate Bill No. 2033 for financial incentives and costs of formation of a multicounty district be made available to encourage the creation of multicounty social service districts with consideration given to alternatives including the following:

1. A reduced share of county financial participation and payments made under Chapter 50-24.1, "medical assistance for needy persons," e.g., from 15 percent of the nonfederal share to 10 percent of the nonfederal share.
2. Reimbursement for 100 percent of the salary, fringe benefits, training, and travel costs of the district director.
3. Reimbursement for all or a percentage of the staff development and training costs incurred by the district.
4. Reimbursement for 50 percent of the nonfederal share of salaries paid and fringe benefits provided to eligibility staff.
5. Reimbursement for 15 percent of the nonfederal share of costs of administration for which the federal share is available.
6. Reimbursement for 100 percent of the compensation and per diem paid to members of the governing board.
7. Reimbursement for 100 percent of the cost of investigating reports of suspected child abuse and neglect.
8. State financial participation in the licensure and regulation of child care and foster care homes and facilities.

In addition, the committees support the introduction of a bill by the Department of Human Services during the 1991 Legislative Assembly providing departmental membership on the Educational Telecommunications Council established in North Dakota Century Code Chapter 15-65.

EDUCATION FINANCE COMMITTEE

The Education Finance Committee was assigned three studies. House Bill No. 1002 directed a study of education finance issues, including the issues of adequate funding for school districts, inequities in the distribution of transportation aid to schools, local effort in support of schools, and other funding sources available to schools including revenues from federal programs and energy taxes. It also required the interim committee to review the operation and effect of laws passed during the 1989 legislative session affecting the county superintendents of schools, ending balances of school districts, reorganization of school districts, educational telecommunications, testing, and nonaccreditation of schools. Senate Concurrent Resolution No. 4001 directed a study of in lieu of property tax payments to school districts; school district revenues derived from oil, gas, and coal taxes; and other payments to school districts other than from the state to determine whether to include these funds as local resources when measuring school district contributions to the foundation program. Senate Concurrent Resolution No. 4002 directed a study of various factors in addition to property wealth which could be used in the education finance formula to equalize educational opportunities for students. Because these issues are interrelated, the committee consolidated the studies into one study of school finance issues. North Dakota Century Code (NDCC) Section 15-59-05.2 directs the Department of Public Instruction to report to a Legislative Council interim Education Committee on the status of interagency agreements for the provision of education and related services to handicapped students, and the chairman of the Legislative Council directed the Education Finance Committee to receive reports on pilot projects that integrate handicapped children into regular education classrooms. House Bill No. 1507 (1989) directed that reports on the restructuring of school district boundaries and the number of interim school districts be made to the Legislative Council interim Education Committee.

House Bill No. 1002 recommended that three professional educators serve on the committee. The Legislative Council selected one educator from a small school district, one from a medium school district, and one from a large school district.

Committee members were Senators Dan Wogslund (Chairman), Bonnie Heinrich, Jerome Kelsh, Karen K. Krebsbach, Evan E. Lips, Don Moore, David O'Connell, and Curtis N. Peterson; Representatives Ole Aarsvold, Quentin E. Christman, Moine R. Gates, Ronald E. Gunsch, Lyle L. Hanson, Bob O'Shea, Douglas G. Payne, Orville Schindler, and Gerry L. Wilkie; and Citizen Members Donald W. Brintnell, Frank N. Fischer, and Dale T. Gilje.

The report of the committee was submitted to the Legislative Council at the biennial meeting of the Council in November 1990. The report was adopted for submission to the 52nd Legislative Assembly.

SCHOOL FINANCE STUDIES

The four significant sources for the payment of state financial aid to public school districts in North Dakota are the state foundation aid program, tuition apportionment payments, transportation program, and special education reimbursements.

Foundation Aid Program and Tuition Apportionment Payments

The foundation aid formula utilizes three major components to derive the amount of state payments made to school districts. The first component is the per-pupil-based state payment. In addition to the per-pupil-based state payment, schools receive a per-pupil payment from the state tuition trust fund. This fund consists of the net proceeds from all fines for violations of state laws and the interest and income from the state common schools permanent trust fund. The Office of Management and Budget certifies to the Superintendent of Public Instruction the amount in the state tuition trust fund on the third Monday in February, April, August, October, and December of each year. The superintendent then apportions the money in the fund among all school districts in the state, in proportion to the number of children of school age residing in each school district. Total per-pupil payments from the 1976-77 school year through the 1990-91 school year are illustrated by the following table:

	Foundation Payment	Tuition Apportionment	Total State Payment
1976-77	\$ 690	\$ 47	\$ 737
1977-78	775	47	822
1978-79	850	53	903
1979-80	903	80	983
1980-81	970	106	1,076
1981-82	1,425	98	1,523
1982-83	1,353 ¹	158	1,511
1983-84	1,400	176	1,576
1984-85	1,350	202	1,552
1985-86	1,425	209	1,634
1986-87	1,380 ²	216	1,579
1987-88	1,400	215	1,615
1988-89	1,385 ³	206	1,541
1989-90	1,411 ⁴	199	1,610
1990-91	1,495 ⁵	200 ⁶	1,695

¹The 1981 Legislative Assembly provided for a \$1,591 per-pupil foundation aid payment. The appropriation necessary to fund this payment was made in anticipation of certain oil extraction tax revenues that were not received by the state.

²Senate Bill No. 2904 (1986), passed during the special session, retroactively reduced the educational support per pupil from \$1,455 to \$1,370 for the second year of the 1985-87 biennium.

³The 1987 Legislative Assembly provided for a \$1,412 per-pupil foundation aid payment. This amount was reduced as a result of an executive ordered two percent general fund reduction and referral of the cable television tax.

⁴The 1989 Legislative Assembly provided for a \$1,525 per-pupil foundation aid payment. This amount was reduced as a result of the referral of tax increase measures.

⁵Estimated payment. The 1989 Legislative Assembly provided for a \$1,545 per-pupil foundation aid payment. This amount was reduced to \$1,431 as a result of the referral of tax increase measures and increased to \$1,495 as a result of the Governor's two percent unallotment.

⁶Estimated payment.

The second major component of the foundation aid formula is the use of weighting factors. School districts are entitled to a certain weighting factor for each pupil in the school district, based on the enrollment in the school district and whether it is an elementary or high school district. The weighting factors, which generally favor schools with lower enrollments and higher per-pupil costs, were included in the original foundation aid program formula to account for the fiscal burden suffered by those school districts. The weighting factors are also higher for students attending high schools. The number of students in a district multiplied by the ap-

propriate weighting factor, multiplied by the foundation aid base payment equals the gross entitlement of the school district from the state foundation aid program. A summary of the current weighting factors, the actual cost of education ratios dating back to the 1976-77 school year, and the five-year average cost of education ratios for the school years 1984-85 through 1988-89 are contained in a table at the end of this report.

After a school district's gross entitlement of foundation aid is established, the third major component of the foundation aid formula—property equalization—is applied. For the 1989-90 school year, a 21-

mill "equalization factor" was multiplied times the net assessed and equalized valuation of real property in each school district. The "equalization factor" is increased to 22 mills for each school year after the 1989-90 school year. The intent of this equalization factor is to make state educational funds available for redistribution to school districts that have relatively low property valuations. The underlying assumption is that a school district with a high property valuation is in a better position to raise a portion of its total cost of education locally than a district with a low property valuation. The gross entitlement, less the amount determined by use of the equalization factor, equals the net state foundation aid payment. After the 1990-91 school year, the amount that the unobligated balance of a school district's interim fund exceeds 75 percent of the preceding year's general fund expenditures, plus \$20,000, will be subtracted from a school district's state foundation aid payment.

Transportation Program

State transportation aid is paid to school districts according to the number of miles traveled and the size of schoolbus operated. Transportation payments for the 1989-91 biennium are 25 cents per mile for vehicles having the capacity to carry nine or fewer students and 68 cents per mile for vehicles having the capacity to carry 10 or more. In addition, school districts receive 25 cents per day for each student who lives outside city limits and is transported on a bus with a capacity of 10 or more students. School districts that arrange for transportation within the incorporated limits of a city within which a school is located receive 12.5 cents per student per one-way trip. Transportation payments for the 1987-89 biennium were 35.5 cents per mile for schoolbuses with a capacity of nine or fewer students and 72 cents per mile for schoolbuses with a capacity of 10 or more. Transportation payments for the 1985-87 biennium were 38 cents per mile for schoolbuses with a capacity of nine or fewer students and 76 cents per mile for schoolbuses with a capacity of 10 or more. For both the 1987-89 and 1985-87 bienniums, the per-pupil payment was 19 cents per day and the in-city transportation payment was 9.5 cents per student per one-way trip.

The transportation formula has been criticized because transportation is funded at a much higher level than regular or special education. State transportation aid has, over the years, steadily increased as a percentage of all transportation costs incurred by school districts. For the 1974-75 school year, total transportation costs were \$10,594,437 and state transportation aid amounted to \$5,592,617 (52.8 percent). During the 1981-82 school year, total transportation costs were \$23,112,963 and state transportation aid amounted to \$17,523,956 (75.8 percent). Total transportation costs for the 1988-89 school year were \$23,588,900 and state transportation aid payments amounted to \$18,538,652 (78.6 percent). The state funds approximately 50 percent of the cost of regular education and 29 percent of the cost of special education.

The transportation formula has also been criticized because of the disparity in the percentage of transportation costs reimbursed to school districts.

In general, rural school districts with fewer students and long routes receive the highest ratio of state aid to actual costs. Many such districts receive state aid in excess of 100 percent of their actual costs. The largest school districts with large student populations and relatively short bus routes receive the lowest ratio of state aid to actual transportation costs. These districts typically receive state aid in amounts varying from 40 to 75 percent of their transportation costs. The 1989 Legislative Assembly, in an effort to reduce this disparity, increased the per-pupil payments and decreased the mileage payments.

Special Education Reimbursements

School districts are statutorily required to provide special education programs for handicapped children, but are not required to provide special education programs for gifted children. School districts that make expenditures for the special education of exceptional (handicapped or gifted) children are entitled to receive state reimbursements. The method used to reimburse school districts is based on the number and qualifications of full-time special education instructors employed by a school district. School districts are reimbursed on an annual flat grant basis for the cost of specific education personnel employed to deliver education services to exceptional children.

Equalization

The foundation aid formula's mill equalization factor has been criticized for not adequately equalizing educational opportunities. In addition to raising the mill equalization factor to increase the local level of support required of school districts with high property valuations, it has also been suggested that the formula equalize other sources of revenues to school districts. For example, some school districts derive revenues from the coal severance tax, the tax on the production of oil and gas, and the tax on coal conversion facilities and some school districts receive federal educational funds to replace taxes lost due to the presence of federal property that is not subject to state or local taxation. Because the federal property is not taxable, the mill equalization factor is not applied to that property, thereby reducing the amount that is subtracted from the foundation aid payment in those districts. In addition, those districts also receive federal educational aid. It has been suggested that factors in addition to property wealth, such as the taxable income of the residents in a school district, be used in the education finance formula to measure a school district's local ability to support education. Other states use factors such as taxable income, assessed valuation of personal property, valuation of public utilities, motor vehicle license receipts, value of farm products, number of employed workers, and sales taxes to measure local ability to support schools.

Mineral Tax Sources

Mineral tax sources of revenue for school districts are the oil and gas gross production tax, the privilege tax on coal conversion facilities, and the coal severance tax.

Portions of the revenues from all three mineral taxes are apportioned to school districts. With respect to the oil and gas gross production tax, NDCC Section 57-51-15(3) provides:

Thirty-five percent of all revenues allocated to any county must be apportioned by the county treasurer no less than quarterly to school districts within the county on the average daily attendance distribution basis, as certified to him by the county superintendent of schools.

North Dakota Century Code Section 57-62-02(2) requires 35 percent of the proceeds of the coal severance tax to be deposited in the state coal development fund for apportionment to coal-producing counties. In turn, 30 percent of the money each county receives from this source must be apportioned to school districts within the county, on an average daily membership basis or to school districts in adjoining counties, when a portion of those school districts' land has been certified as eligible to share county funds.

North Dakota Century Code Section 57-60-14 allocates 35 percent of the funds received from the privilege tax on coal conversion facilities in each county to that county. Section 57-60-15 requires 30 percent of all funds received by a county from the privilege tax on coal conversion facilities to be apportioned to individual school districts on an average daily membership basis.

Federal Impact Aid Program

The federal impact aid program is designed to compensate school districts having federal installations or students from such installations. Those districts have increased school enrollments as a result of the federal activity and less property tax moneys because the federal property is tax exempt.

The federal payments will not be made to school districts if the state makes less aid available to the district because it is eligible for federal aid than the district would receive if it were not eligible for federal aid, unless the state has a program to equalize expenditures among its school districts. North Dakota does not equalize these federal payments. A state that qualifies to take federal payments into account may do so only to the proportion that the local revenues of a school district covered under the equalization part of a state aid program are to that school district's total local revenues for education.

According to federal law, a state's program for funding education is equalized if the state meets an expenditure disparity standard or a wealth neutrality test, or exceptional circumstances exist. To meet the disparity standard, the disparity in the amount of current revenue expenditures per pupil, for free public education among the school districts in the state, cannot exceed 25 percent. The expenditure disparity test measures the variation in current expenditures per pupil for operation and maintenance among school districts. Under the test, two categories of special cost differentials are removed—special education costs and costs associated with sparsity or density of population. After those costs are removed, the test requires all school districts to be listed from high to low in terms of current expenditures per student. The top and bottom five percent of

students are removed from the test range. If the disparity in current expenditures per pupil is no more than 25 percent of pupils in the test range, the program qualifies as an equalized program.

To meet the wealth neutrality test, no less than 85 percent of the total state, intermediate, and local revenues for all school districts must be revenues that are not derived from any wealth advantage that a school district may have over any other school district. State and local revenues available under a state school finance equalization program are wealth neutral, to the extent that each school district receives the same number of dollars per pupil for the same tax effort and is allowed to spend the same amount per pupil as any other school district in the state under the program. Tax revenues in excess of those determined to be equally available to all school districts are not wealth neutral. North Dakota does not meet either one of these tests.

A state program can also take federal impact aid into consideration if the United States Secretary of Education determines that the state has exceptional circumstances.

In the past, the foundation aid formula has taken federal impact aid payments into consideration. In 1973 the Legislative Assembly enacted Senate Bill No. 2026, which provided that in determining the foundation aid due each school district, the "amount in dollars of the state group rate for Title 1 of Public Law 81-874, 81st Congress, represented by the 21-mill county equalization levy in the determination of the state group rate multiplied times the number of students for whom the district received Public Law 81-874 payments" would be subtracted. In 1979 this provision was amended to provide that the amount of federal impact aid funds deducted could not exceed the limits imposed by federal regulations adopted pursuant to Public Law 81-874, Section 5(d). The provision authorizing these payments to be deducted was also repealed by the 1979 Legislative Assembly, effective July 1, 1980.

Impact of Selected 1989 Legislation

County Superintendents of Schools

House Bill No. 1640 will change the office of the county superintendent of schools from an elected position to an appointed position effective January 1, 1993. The presidents of school district boards within the county must select a candidate for the position of county superintendent of schools subject to approval by the board of county commissioners. Counties with fewer than 1,000 students in grades kindergarten through 12 must combine with another county or counties to employ jointly a county superintendent of schools, unless exempted by the Superintendent of Public Instruction. If each county's board of county commissioners cannot agree to share a county superintendent of schools, the Superintendent of Public Instruction may require a county to participate in a plan jointly employing a county superintendent of schools. County commissioners must submit to the school boards in the county biennial plans describing the amount and quality of educational services to be provided by the county superintendent of schools. The provisions of the bill requiring a county superin-

tendent to be selected and requiring counties to share a county superintendent of schools are effective on July 1, 1992.

The executive board of the County Superintendents Association established three ad hoc committees to assist with the implementation of House Bill No. 1640. The association conducted a needs assessment survey in each county. Each county superintendent was required to develop a list of current activities. The association held meetings across the state to receive information and to compile the list of activities. Based on the list, the association will select indicators of quality educational services and try to establish procedures for implementing these indicators. A final draft will be prepared after comments from various education organizations and the North Dakota Association of Counties, and a plan will be adopted by the association. The plan will then be submitted to the Superintendent of Public Instruction to be used statewide when reviewing and approving the biennial plans required by House Bill No. 1640.

Ending Balances of School Districts

House Bill No. 1614 will reduce a school district's foundation aid payment by the amount that the unobligated balance of the district's interim fund, on the preceding June 30, is in excess of the amount authorized by law. School districts may not have an interim fund in excess of three-fourths of the current annual appropriation for all purposes other than debt retirement and appropriations financed for bond sources plus \$20,000. This bill becomes effective on June 30, 1991. A representative of the Superintendent of Public Instruction testified that the June 30, 1989, ending fund balances totaled \$13.2 million less than on June 30, 1988, which is a reduction of approximately 10 percent. The June 30, 1989, ending general fund balances for all school districts totaled \$108 million.

Educational Telecommunications

House Bill No. 1041 changed the membership of the Educational Broadcasting Council, changed the name of the Educational Broadcasting Council to the Educational Telecommunications Council, and broadened the council's focus from television and radio to telecommunications. The council is required to direct the implementation of compatible telecommunication systems and develop a comprehensive written plan for the development of telecommunications in the state.

House Bill No. 1002 transferred \$1,160,492 from the state school construction fund to the Superintendent of Public Instruction for the administration of the state school construction fund, transitional telecommunications projects, public and educational broadcasting services, matching funds for purchasing a public television transmitter to serve south central North Dakota, and for telecommunications grants and developing and implementing a plan for a statewide system of interactive telecommunications. In addition, \$1,900,000 is to be used for developing a statewide telecommunications system. The bill authorized the Educational Telecommunications Council to require school districts to provide up

to 25 percent in matching funds to receive a telecommunications grant. In developing and implementing a plan for a statewide system of interactive telecommunications, the Educational Telecommunications Council is required to solicit grants to be used in conjunction with moneys appropriated for telecommunications.

Senate Bill No. 2003 appropriated \$700,000 to the State Board of Higher Education for telecommunications. This money, and any other money that becomes available for telecommunications or technology-related programs, can only be spent by the board after consultation with the Educational Telecommunications Council.

In addition to the council's directive to develop a comprehensive written plan for the development of educational telecommunications in North Dakota, the council is charged with the duty of carrying on a continuing study related to needs, resources, and facilities which are available and may be required to establish educational telecommunication programs and systems throughout the entire state. The council created three subcommittees—the technology committee, the needs assessment committee, and the funding committee. The technology committee is studying alternative technologies in relation to the overall plan to provide the council with an inventory of technology in use or being considered and to make recommendations based on this research. The needs assessment committee developed a mission statement for the council which is to use telecommunications to improve quality of education for all students and to provide access to facilities and services or both, to meet the needs of agriculture, industry, government, health, labor, business, and other interests. The funding committee has been assigned the task of keeping track of alternative means of funding for technology. The council is working on a statewide plan and has hired a consulting firm to assist in that endeavor.

The State Board of Higher Education is working toward the development of educational telecommunications, including interactive video classrooms, at the state's colleges and universities. A representative of the board testified that the board was working closely with other governmental entities, the private sector, and elementary and secondary schools to create an integrated, statewide telecommunications plan. An example of this is the rural health project, sponsored by the United States Department of Agriculture. The project is a joint effort by the North Dakota State University Extension Service Center and the University of North Dakota Center for Rural Health to inform people about careers as health professionals in rural hospitals.

The goal of the state's colleges was to offer classes through a video system by the fall term of 1990. Funds provided by Senate Bill No. 2003, together with federal funds, will be used to reach from seven to 10 sites the first year.

The State Board of Higher Education has used \$35,000 of the funding from Senate Bill No. 2003 to support the Educational Telecommunications Council in its efforts to create a plan for both local and statewide uses of educational telecommunications and \$6,375 to enroll all of its campuses in the Western

Testimony and Committee Considerations

Cooperative for Telecommunications sponsored by the Western Interstate Commission for Higher Education. Valley City State University will spend \$23,663 from Senate Bill No. 2003 plus some of its institutional funds to develop training in the use and maintenance of educational technologies. Sixty thousand dollars was removed from the telecommunications line item as a result of budget cuts. The remaining funds will be used to purchase equipment and communications time to support the video network.

Testing

House Bill No. 1002 appropriated \$402,228 to the Superintendent of Public Instruction for implementation of a systematic statewide testing program. This money is being used to conduct testing workshops and test students in order to help schools in a school improvement process. The Superintendent of Public Instruction chose the Comprehensive Tests of Basic Skills, 4th edition, and the Test of Cognitive Skills as the achievement and ability tests that will be administered statewide to students in grades 3, 6, 8, and 11.

Accreditation of Schools

House Bill No. 1472 reduced foundation aid payments to unaccredited high schools by denying to them any aid that the school districts in which they are located would otherwise be entitled due to the application of the weighting factors in Section 15-40.1-07 for the first year a school is not accredited. The foundation aid payments will be reduced by \$200 per pupil for each year that the school remains unaccredited. Any unaccredited school that becomes accredited is entitled to the full foundation aid payment.

House Bill No. 1002 appropriated \$20,800 to the Superintendent of Public Instruction to review the current accreditation standards. The new accreditation standards finalized in October 1989 recognize that schools seeking a design for more effective education may wish to develop formats and procedures that differ from existing accreditation standards, criteria, and procedures. Innovation is encouraged under controlled circumstances. Fourteen public schools are not accredited. A representative of the Superintendent of Public Instruction testified that as a result of House Bill No. 1472 and possibly because of fiscal restraints, a number of these schools are developing alternative formats and procedures. One of these alternatives has been participation in restructuring programs developed pursuant to 1989 House Bill No. 1507. School districts have shown broad interest in sharing administration personnel and in using electronic media to enhance curricula. Implementation of the accreditation standards and criteria finalized in October 1989 will begin during the 1991-92 school year and be fully implemented by the 1994-95 school year.

Income Factors and In Lieu of Tax Revenues

The committee reviewed several proposals that would have taken income and other sources of revenues received by school districts from various taxes relating to coal, oil, and gas and from federal impact aid into account in the foundation aid formula. The committee considered 1989 House Bill No. 1635 and two bill drafts based on the deduction established in 1989 House Bill No. 1246. Both House Bill Nos. 1635 and 1246 would have incorporated income factors into the foundation aid formula. Under House Bill No. 1635 the following amount, in addition to the amount determined by use of the hypothetical mill levy, would have been deducted from a school district's foundation aid:

The amount resulting from dividing the five-year average aggregate adjusted gross income for North Dakota from income tax returns for the state divided into the product of 20 mills times the latest available taxable valuation of property of the state, multiplied times the aggregate adjusted gross income from income tax returns for the school district.

As an example, this deduction would be calculated as follows (assume that the taxable valuation of property in the state is \$20 million and the five-year average aggregate adjusted gross income for North Dakota is \$4,755,000,000):

The taxable valuation of property in the state of \$20 million would be divided by the five-year average aggregate adjusted gross income for North Dakota of \$4,755,000,000 to arrive at a factor of .0042. This factor would be multiplied times the adjusted gross income for the school district. The larger a school district's adjusted gross income the greater the amount subtracted from the school district's aid.

One of the bill drafts based on 1989 House Bill No. 1246 would have deducted the following amounts from a school district's foundation aid payment:

1. The average North Dakota federal adjusted gross income per individual income tax return for the school district divided by the state average North Dakota federal adjusted gross income per individual income tax return for all school districts, multiplied times the latest taxable valuation of the property of the school district, multiplied times 30 mills.
2. Three percent of the money the school district received from the state tuition fund for students who did not attend public schools in that school district.
3. Three percent of the federal revenues the school district received as payments in lieu of taxes including federal impact aid if deducting the federal impact aid would not result in a loss of those federal funds to school districts.
4. Three percent of the revenue the school district received from oil, gas, and coal taxes.

The other bill draft based on 1989 House Bill No. 1246 would have changed the deduction to an amount equal to the average federal adjusted gross income per student for the district, divided by the

average federal adjusted gross income per student for the state, multiplied by the taxable valuation of property of the school district, multiplied by 20 mills. This bill draft used adjusted gross income per student, rather than per individual tax return, to reflect the resources behind each pupil and to coincide with valuation, which is generally discussed on a per-pupil basis.

The idea behind the income factor used in these bill drafts was that if the average income of residents of the school district were higher than the state average, the ratio would be greater than one. A ratio greater than one would increase the amount that would be multiplied by the mill factor and deducted from the school district's state aid. Conversely, a school district whose residents had an average income which was below the state average would have a ratio of less than one, which would reduce the amount that was multiplied by the mill factor, thus reducing the amount deducted from a district's state aid.

Opposition was expressed to using a 30-mill factor in the formula, in an effort to increase equalization, because equalization based on property valuation assumes that property valuation is indicative of ability to pay. It was stated that the equalization factor seeks to equalize educational opportunity by focusing on local property valuation rather than actual dollar income. It was suggested that local effort should be based on income rather than property valuation.

The theory behind using income to measure a school district's local ability to support education is that school districts with persons having very low incomes cannot afford to make as much local effort as persons in districts with the same property values but very high incomes.

Testimony indicated that there were several problems with using an income factor in the formula. State law requires taxpayers to report the school district in which they live on their tax return. Approximately 15 percent of the individual income tax returns are not identified as being from any school district. In addition, income reported may not be earned in the school district in which the person lives. Each of the bill drafts used an income factor based on adjusted gross income. Testimony indicated that using adjusted gross income is not equitable because adjusted gross income is not the same for everyone. Self-employed individuals can take many more deductions than those who are not self-employed, thus reducing their adjusted gross incomes. By using income in the formula, the deduction in some of the districts with higher than average income and high local effort will be increased. This will require the mill levy in those districts to be increased and require property taxpayers who are already making a high local effort to pay for any increases needed as a result of the lost state aid. In addition, testimony indicated that the individuals with property are not necessarily those with the high incomes and that in order to reach the actual income, it may be necessary to give school districts the authority to impose a school district income tax, create a statewide income tax for schools, or allocate a certain percentage of the state income tax to school districts. This would ensure that the

income of a district is taxed, rather than requiring an additional increase in local effort by using an income factor to be paid for through property tax increases.

The committee also considered a proposal for funding education under which a tax for education of one-half to one percent of adjusted gross income would have been imposed. The money would have been collected by the state and returned to each school district from which it was collected. No district would have been entitled to receive more from the education tax in dollars than it was collecting in property taxes for its general fund. One-half of the dollars collected from the education tax would have been used for property tax reduction. The reductions for each district would have been made in the same ratio each district collects general fund property taxes to all districts. Imposing a local income tax option creates problems in that it is difficult to determine the wealth of a district and it cuts into the state tax base. Testimony also indicated that a portion of the income tax already being paid into the general fund is being distributed through the foundation aid program to school districts, with a proportionately higher amount going to districts with the lowest property valuations. In addition, individuals from districts with higher than average incomes are already paying more taxes.

Representatives of the North Dakota Association of Oil and Gas Producing Counties opposed deducting oil, gas, and coal tax revenues from school districts' foundation aid payments. Counties and school districts cannot levy a tax on the oil equipment or the wellhead, so the payment received from the gross production tax is in lieu of the taxes that could otherwise be levied on this property. The gross production tax on oil was created in 1953 as a payment in lieu of all other taxes. The gross production tax was increased from four to five percent in 1957. The formula for allocating revenues to counties, cities, and school districts was changed, thereby reducing the amount school districts receive from 45 to 35 percent of the oil and gas production tax allocated to the county. All school districts in the state currently benefit from oil and gas money, since they receive payments from the state tuition fund. Seventy-two percent of the money in this fund is from oil and gas revenues. The school districts that receive revenues from the oil and gas production tax have declining enrollments as a result of declining populations. Deducting these revenues from a school district's state aid would be detrimental to these school districts.

A representative of the Tax Commissioner compared the coal conversion tax on the Coyote generating facility with the ad valorem property tax that might have been levied on that facility. Loss of the coal conversion tax would result in a loss to the state general fund of \$962,000 per year. Under the current system, many taxing districts in the county receive revenue from the conversion tax, even though the plant is not located in their district. This recognizes the fact that the infrastructure impacts are not limited to the taxing district in which the plant is located. If the coal conversion tax were replaced by allowing a taxing district in which the property was located to impose a property tax, the local taxing districts that do not have the coal conversion facility,

but which currently receive revenue from the coal conversion tax, would have to find other ways to compensate for the loss of revenue. This could mean reducing the level of local government services, increasing the tax on other property in the district, or seeking other remedies. Many local improvements made to benefit the local subdivisions were paid for by coal impact funds. Had the local jurisdictions been allowed to levy an ad valorem property tax on the plant from the beginning, it is unlikely that they would have received as much, if any, coal impact money. Assuming that the dollar amount of coal conversion tax currently being paid would be made up by increased property taxes to the extent it could, and that the local taxing districts would not increase the dollar amount of funding, the consolidated mill rate for property located in the same combination of taxing districts as the Coyote plant would drop from approximately 230 mills to 71 mills.

A representative of the Superintendent of Public Instruction testified that if the state tried to deduct a portion of a school district's federal impact aid as proposed in one of the bill drafts, the state would probably lose these federal payments because the state's program for funding education would not be equalized in a manner that would meet federal requirements.

Proponents of broadening the definition of local wealth to recognize sources of income such as federal impact aid and oil, gas, and coal tax revenues when measuring a school district's ability to support education locally said it does not appear to be fair for some school districts to depend entirely on property taxes to support their local share of education, while other districts receive revenue from these other sources, in addition to property taxes.

Guaranteed Foundation Program

During the 1987-88 interim, the Legislative Council's interim Education Finance Committee received a report from E. Gareth Hoachlander and Robert A. Fitzgerald, MPR Associates, Inc., Berkeley, California. MPR Associates was retained by the North Dakota Education Association to analyze North Dakota's school finance system. During this interim, Dr. Hoachlander, at the direction of the North Dakota Education Association, enhanced the study. He explored the impact on school finance in North Dakota by incorporating factors such as personal income, federal impact aid, and oil, gas, and coal revenues into the education funding formula.

North Dakota's definition of wealth in the education funding formula is based on taxable property. Twelve states use other factors to measure wealth, with the primary factor being income. In North Dakota there is a strong positive influence of taxable valuation per student on expenditures per student and there is a strong positive effect of adjusted gross income per student on expenditures per student. As district size increases, expenditures per student go down. As the mill levy increases, expenditures per student increase. As impact aid increases, expenditures per student decline, and as energy revenues increase, expenditures per student decline. The most important determinants of spending differences in North Dakota are variations in taxable valuation per

student, adjusted gross income per student, district size, and local tax effort.

A foundation plan was presented which would guarantee each school district the school district average expenditure per student for each student in four size categories of school districts. Under this approach, equality in expenditures per student would be achieved for at least 75 percent of the students in the state. The inequality that remains affects a relatively small number of students, even though these students are in a large number of the school districts.

The additional cost to the state of this proposal would depend on the local effort required. If the state required a local effort of 21 mills, it would cost the state an additional \$135 million per year. If the state required a levy of 131 mills, which is the state average, it would cost an additional \$31,155,000 per year. It would require a levy of 204 mills to remain at the current level of state funding for the foundation program. Under this proposal, 69 percent of the pupils would fall within \$100 of the guaranteed foundation amount and 84 percent would fall within a \$200 band. In California the Supreme Court upheld the state's educational finance system as constitutional, when it found that 90 percent of the average daily attendance in California was within a \$200 band of a certain foundation level.

The existing system was described as not equalizing education because the current foundation level and local effort expected are too low. Under the existing formula, given that impact aid and federal energy revenues do not have a positive effect on expenditures, it would be a mistake to deduct these revenues in the calculation of state aid. If a guaranteed foundation purpose is adopted and the local effort required is increased, it would be appropriate to deduct federal impact aid and energy revenues from a school district's state aid. If the revenues were not deducted, those districts would receive from \$300 to \$800 more per pupil than other districts, because all districts would be receiving the guaranteed foundation amount. Not deducting these payments under this type of proposal would increase inequality.

The committee reviewed a bill draft based on the proposal. Under the bill draft, a school district with fewer than 50 pupils would have received a guaranteed foundation payment of \$4,678 per pupil; a school district with 50 to 149 pupils would have received a guaranteed foundation payment of \$4,140 per pupil; a school district with 150 to 299 pupils would have received a guaranteed foundation payment of \$3,634 per pupil; and a school district with more than 300 pupils would have received \$3,108 per pupil. A school district would have been required to levy 204 mills on the taxable valuation of property in the school district in order to receive foundation payments, or levy the number of mills necessary to raise the guaranteed foundation level per pupil, whichever would have been less. A school district's state entitlement would have been the difference between the guaranteed foundation level and the amount raised locally by the 204-mill levy. In addition, federal revenues received by the school district, including federal impact aid, and revenues received from oil, coal, and gas taxes, would have been deducted from a school district's state aid.

Under this bill draft, the smaller school districts would have received a higher payment per pupil. This was intended to address the inefficiencies of small school districts, as compared to large school districts. Forty-six school districts have fewer than 50 pupils, 83 districts have between 50 and 149 pupils, 75 districts have between 150 and 299 pupils, and 73 districts have 299 or more pupils. The smallest category of school districts accounts for less than one percent of the students. The bill draft would have capped high spending districts and would have brought low spending districts up to approximately four percent below the state average in spending. Generally, under the bill draft, the greater a school district's taxable valuation per student, the less state aid the district would have received per pupil.

Guaranteed Tax Base Funding

While the foundation program emphasizes the state guaranteed spending level, the guaranteed tax base plan emphasizes a state-determined tax base and a district's local tax effort. The guaranteed tax base plan is designed to assure that every district in the state can act as though it has a tax base the same as some state-set level. Under a guaranteed tax base program, the local school district chooses its tax rate for education. This tax rate is then applied to the guaranteed tax base and the actual tax base for the school district. State aid is the difference between what would be raised with the guaranteed tax base and what can actually be raised from the local tax base. The greater the difference between actual and guaranteed wealth, the larger the amount of state aid. For example, assume that a state guarantees a tax base of \$100,000 per pupil. If the actual local tax base is \$25,000 and the local tax rate is 10 mills, the guaranteed revenues would be \$1,000. Since each district has the same tax rate of 10 mills, each is guaranteed revenues of \$100,000 x .01 or \$1,000 per pupil. If a district raises \$250 from its local tax base (\$25,000 x .01 = \$250) that district would receive \$750 in state aid. A district with a larger tax base would receive less in state aid.

Unlike the foundation program, the guaranteed tax base program provides districts with an incentive to increase tax effort since aid increases proportionately for every increase in the tax rate. For example, if each district doubled its tax rate to 20 mills, each district would have a revenue guarantee of \$100,000 x .02 or \$2,000. If the district tax base was \$25,000, a tax rate of 20 mills in the district would raise \$500 in local revenues and the district would be entitled to \$1,500 in state aid. The degree of equalization under this plan is affected by the level of the guaranteed tax base and the size of local district tax rates. A high guaranteed tax base increases the difference between actual and guaranteed wealth, and reduces the disparity and district expenditures by increasing the amount of state aid. If all districts with a tax base less than the guaranteed tax base levy identical tax rates, they will have equal revenues to spend on education. However, the proportion of state aid will vary. Spending in districts with tax bases above the state-guaranteed tax base will be determined by the locally chosen tax rate and the size of the local property tax base. Some districts are not

always able or do not tax themselves as heavily for education as do other districts. If this is the case, disparities in total expenditures will occur.

Classroom Unit Funding

The committee considered a bill draft that would have provided for the funding of education on a classroom unit basis. Under this concept, funding allocations to a school district would be calculated according to the number of classroom units a particular district has. The number of units would be determined by the size of student population and the number of students in kindergarten, elementary, and high school programs. The bill draft was based on the classroom unit funding system in Wyoming. The number of classroom units that each district could claim would have been based on the ratio of students to teachers and on schools of differing enrollments; provided, however, that one-teacher schools would have produced at least one classroom unit, regardless of enrollment. The rationale is that a teacher's full salary and benefits must be paid regardless of the actual number of students taught.

A school's average daily membership would have been divided by a number known as a divisor and the quotient would have been expressed in terms of classroom units. In the bill draft, a different divisor set would have been used for elementary, junior high, and high schools. The classroom units are size weighted because smaller schools, due to the lack of economies of scale and other factors, generally cost more to operate per student than larger schools. The smaller the school, the smaller the divisor used. This favors smaller schools in that a smaller divisor applied to any number will generate a relatively larger quotient than will a larger divisor applied to that same number. Thus, the generation of classroom units requires fewer students in a smaller school than in a larger school. The bill draft also incorporated Wyoming's foundation guarantee program. If a school district did not have access to local funding resources at least equal to its computed guarantee, the state would have paid the difference.

Proponents of the classroom unit funding concept stated that the basic education unit is a classroom and not a pupil. The concept incorporated in the Wyoming plan would have ensured that a child's education did not depend on local property taxes but on the wealth of the state as a whole. The per-pupil method of funding is detrimental to small rural schools. The loss of a few pupils and state aid for those pupils can have a significant impact, while the operating costs for those schools generally do not decline. Classroom unit funding would be beneficial to small schools and provide them with the money needed to offer the same programs as larger schools. In Wyoming a classroom unit is valued at \$75,050. Under the bill draft reviewed by the committee, the value of the classroom unit, based on the current funding provided by the state for the foundation program, would have been approximately \$31,500. Testimony indicated that school districts would not be able to operate adequately at this level of funding.

70/30 Funding Concept

The committee received information on what became known during the 1981-82 interim Education Finance Committee study as the 70/30 concept. This approach to funding schools was named for the funding percentage objective that it was directed to achieve. It calculates state education aid entitlements for individual school districts by taking into account the costs of education incurred by each district. The funding formula under the 70/30 concept begins by determining the adjusted cost of education for each school district. The adjusted cost of education is determined by taking the gross expenditures of a school district for the preceding school year and subtracting expenditures for capital outlay such as buildings and sites or debt service, expenditures from school activities and lunch programs, expenditures for transportation, including the cost of schoolbuses, expenditures from state funds paid to the district for vocational education pursuant to NDCC Chapter 15-20.1 and for special education pursuant to NDCC Chapter 15-59, expenditures from state tuition fund distributions, and expenditures from federal funds except from funds designed to compensate districts in lieu of property taxes.

In response to criticism of the existing funding formula's hypothetical mill levy equalization factor, the 70/30 concept contains an equalization factor designed to treat districts of varying valuations and costs in a more equitable manner. To determine local effort, the mill levy necessary to raise 30 percent of the estimated statewide adjusted cost of education for all school districts is multiplied by the taxable valuation of each school district. The amount raised in the school district by that mill levy is subtracted from the adjusted cost of education for that school district. The state aid for the school district is the adjusted cost of education for that school district, less the amount raised by the mill levy.

A representative of the Superintendent of Public Instruction testified that using the current state funds available for education, the state's share would only be 49.8 percent and not 70 percent. Critics of the formula said that the 70/30 approach would reward high spending school districts. A district's prior expenditure level would provide the base for allocation of state education aid. Thus, a district which had spent the most on education would receive a correspondingly large payment in state aid, and a school district that had been operating on an extremely restricted budget and had given cost control a high priority would be penalized.

Tuition Apportionment Distributions

North Dakota Century Code Section 15-44-03 requires that distributions from the state tuition fund be made to school districts in proportion to the number of school age children residing in each district. This method of distribution was criticized because public school districts having private schools located within them receive a tuition payment for students attending private schools. The committee reviewed a bill draft that would have changed the manner in which distributions are made by apportioning the money to school districts based on the ratio that the total amount of foundation funds a school district

would have received had no deduction been subtracted from the aid bears to the total amount of foundation funds distributed by the superintendent plus an amount equal to the deduction.

Testimony indicated that public school districts provide vocational education and special education services to children who do not attend public schools in the district. This is one of the reasons why public school districts receive the tuition apportionment payment for those students. Proponents of the proposal testified that it would be more equitable to distribute money to school districts based on services provided and not on the number of students in private schools.

Under the bill draft, school districts having Bureau of Indian Affairs schools in them would have lost significant amounts of money. Testimony indicated that these school districts did not have enough taxable property with which to make up the losses.

Transportation Aid

The committee reviewed a bill draft that would have eliminated all state transportation aid payments to school districts, except payments for special and vocational education transportation, and instead provided for an annual education enhancement payment to each school district equal to the amount each district received as transportation aid for the 1990-91 school year. The theory was that this would have given school districts the flexibility to use the money where needed.

The transportation formula has been criticized because there is a wide disparity in the percentage of transportation costs reimbursed to school districts. Critics of the bill draft stated that this payment would continue these disparities. In addition, if transportation routes changed in a district, the district would not receive any more or any less money. Testimony indicated that under current law a school district can use the money it receives as transportation aid for anything and concern was expressed that if this aid lost its identity, funding for transportation could eventually be eliminated.

Conclusion

Committee members recognized that changes in educational funding are imperative, but the state's current financial situation needs to be better defined and understood before alternative funding methods may be pursued. Therefore, the committee makes no recommendation regarding school finance issues.

SCHOOL DISTRICT RESTRUCTURING

North Dakota Century Code Chapter 15-27.6, enacted in 1989, provides for the establishment of planning grants and supplemental pupil payments to restructure school districts into interim school districts or consortiums, for the purposes of increasing the educational opportunities available to students and sharing school administrators. Each school district participating in a consortium is entitled to receive state aid in the amount of \$125 to \$165 per pupil for a period not to exceed three years. School districts can receive the per-pupil aid for an additional two years if the voters in the participating school districts vote to reorganize into a new district. An

appropriation of \$1,254,500 was made to implement the restructuring program during the 1989-91 biennium. The Superintendent of Public Instruction is required to report to the Legislative Council's interim Committee on Education regarding the status of the planning grants and the number of interim school districts.

A representative of the Superintendent of Public Instruction testified that a 14-member advisory committee was established to develop guidelines for implementing the bill. School districts showed significant interest in the program. Some of the school districts indicated that the establishment of consortiums allows districts to improve educational quality and opportunities for children. Faced with declining enrollments, reductions in state funding, and ever-expanding costs, the establishment of consortiums provides an alternative method for school districts to provide quality education to children who face a future in an increasingly complex and competitive society.

Committee members expressed concern that some school districts may be entering into consortiums only to obtain the additional state aid. Committee members also expressed concern that school districts could receive the supplemental payments for three years and then not vote on reorganization. Testimony indicated that originally some school districts were interested only in the financial incentives. However, involvement in a consortium lead to the realization that the primary motive should be increasing the educational opportunities for students.

By the end of the 1989-90 interim, the school district boundary restructuring program included 13 consortiums composed of 75 districts, with a total enrollment of 18,034 students, and a land area of 16,436 square miles. Excluding the 12 largest districts in the state, these 13 districts comprise over 27 percent of the 268 rural school districts in North Dakota and 23 percent of the land area of the state. A total of 142 districts received informational presentations about the program. Four of the consortiums received planning grants in January 1990 and had submitted final reports which were funded and approved by the State Board of Public School Education. Between January and May 1990, six of the consortiums received planning grants and were in the planning process with the intention of implementing a cooperative program in September 1991. These six units include 34 school districts, over 10,000 students, and nearly 8,000 square miles. The three additional units are on a waiting list to receive planning grants. These three units include 19 districts, 4,124 students, and 3,852 square miles.

The Superintendent of Public Instruction testified that the school district boundary restructuring program has succeeded in bringing school districts into units large enough to gain significant cost efficiencies and provide comprehensive educational programs.

The director of school district restructuring, testifying about problems with the current law, stated that a school district is not now required to vote on a reorganization proposal at the end of the three-year period. Also, if one school district in a consortium votes against a reorganization proposal, the process is then stopped and the other school districts have to

begin again. In addition, the supplemental payments are given to individual school districts and not to the consortium. It was suggested that the money should go directly to the consortium so that it would not have to be collected from the school districts. This would also allow the consortiums to hire their own personnel.

The committee reviewed a bill draft establishing a separate reorganization procedure for school districts that restructure under this program. The draft would require the distribution of supplemental pupil payments to the interim school district, rather than to each individual school district participating in the consortium and school districts would no longer have the option of opting out of a consortium unless the district annexed itself to another district. The interim district board, rather than the county committee, would be required to develop a proposal for the reorganization of participating school districts.

The bill draft would, in addition, provide for the establishment of planning grants and supplemental payments to school districts with fewer than 1,000 students which enter into cooperative arrangements for educational services with larger contiguous districts. The supplemental payments could be made for up to three years in an amount equal to the actual cost of purchasing the educational services or \$165 per pupil for each pupil participating in the purchased educational service from the school district purchasing the service. At least 90 percent of the supplemental payments would have to be used to purchase educational services and not more than 10 percent could be used for administrative or transportation expenses. The payments could only be used to purchase courses or services that are not available in the school district. Prior to the expiration of the three-year period in which the supplemental payments are made, the appropriate county committee would have to develop a plan for the reorganization of each school district participating in the cooperative arrangement.

Proponents of providing incentive payments to school districts that enter into cooperative arrangements stated that it allows involvement by larger school districts. While the program established by NDCC Chapter 15-27.6 encourages small school districts to enter into consortiums in order to receive the incentive payments, it may make more sense for small districts to cooperate with larger districts.

Opposition to the draft was expressed because it did require districts to be contiguous in order to cooperate and it did require county committees to develop reorganization plans for cooperating school districts. It was stated that generally school districts wishing to purchase secondary school services would be the ones entering into cooperative arrangements and those services were not necessarily available from contiguous districts.

Testimony also indicated that if the contiguous limitation were removed the provision requiring development of a reorganization proposal should also be removed because school districts that are not contiguous cannot reorganize. It was suggested that a provision requiring a reorganization proposal to be pursued would discourage school districts from participating in cooperative arrangements. Some large

school districts would not want to reorganize because if they did, they would have to provide transportation. The bill draft was amended to remove the contiguous limitation and the provision requiring the county committee to develop and pursue a reorganization proposal for school districts participating in cooperative agreements.

The committee also reviewed a bill draft that would have provided that if any school district receiving per-pupil payments annexed to or reorganized with another district the resulting district would receive the same per-pupil payments as each separate district received prior to the annexation or reorganization for the time that the school buildings in use prior to the annexation or reorganization continue to be used. Under current law, school districts that reorganize or annex are entitled to receive the same weighting factors that they received prior to an annexation or reorganization for a period of four years, regardless of whether they keep all the buildings operational. Opponents of the proposal said it may act as a disincentive for a school district to close a building.

Recommendation

The committee recommends Senate Bill No. 2034 to establish a separate reorganization procedure for school districts that restructure under NDCC Chapter 15-27.6 and to establish planning grants and supplemental payments for school districts that enter into cooperative arrangements to purchase or provide educational services.

SPECIAL EDUCATION INTERAGENCY AGREEMENTS

North Dakota Century Code Section 15-59-05.2 requires the Superintendent of Public Instruction to develop and implement interagency agreements with public and private agencies for purposes of maximizing available state resources in fulfilling the education-related service requirements of Public Law 94-142. Public Law 94-142 also requires the department to develop interagency agreements. Other federal laws deal specifically with interagency agreements relating to the provision of services to handicapped children through age five. The federal laws require the superintendent to develop interagency agreements to receive federal funding.

The Superintendent of Public Instruction reported that in light of the administrative changes made at the Developmental Center at Grafton, revisions are being made to an agreement with the Director of Institutions regarding each agency's responsibility for providing services to handicapped students from age three through 21. The original agreement involved the Grafton State School, School for the Blind, and School for the Deaf. The Grafton State School, now known as the Developmental Center at Grafton, is under the jurisdiction of the Department of Human Services. As of January 1991, the School for the Blind and the School for the Deaf will be under the jurisdiction of the Superintendent of Public Instruction. As a result of these changes, the focus and nature of the agreement will change significantly. The educational services for residents of the Developmental Center will be provided by the public school district in which

the center is located and no longer by the Developmental Center.

Another agreement by the Superintendent of Public Instruction, State Board of Vocational Education, Department of Human Services, and Job Service North Dakota covers each agency's responsibility in planning for the transition of handicapped students, age 18 through 21, from school services into other agency programs. The Superintendent of Public Instruction has an agreement with the Region 8 Administration for Children, Youth, and Families located in Denver, Colorado. That agency represents the North Dakota Headstart program. The agreement specifies responsibilities of the Superintendent of Public Instruction and the Region 8 Headstart program for the provision of services to handicapped children age three through five.

The Department of Human Services, Department of Health and Consolidated Laboratories, and Superintendent of Public Instruction are developing an agreement pursuant to Public Law 99-457. This agreement will define the financial responsibility of each agency for providing handicapped children with a free and appropriate public education, establish procedures for resolving disputes among agencies that are parties to the agreement, and establish procedures under which local educational agencies may initiate proceedings to secure reimbursement from agencies that are parties to the agreements. The purpose of the agreement is to eliminate duplication and achieve efficiency in providing services to handicapped children through age five.

Conclusion

The committee accepted the status reports regarding interagency agreements for the provision of education and related services to handicapped students.

SPECIAL EDUCATION INTEGRATION

Public Law 94-142 requires that a continuum of service options be available to children with disabilities and that the type of services offered must be in the least restrictive educational environment. The law designates the public school regular education classroom as the least restrictive educational environment. Justification must be given if a more restrictive setting is chosen. The regular education classroom provides children with disabilities the opportunity to interact with nondisabled peers and it is the classroom they would otherwise attend. The process of decisionmaking for placement of students with disabilities has improved since Public Law 94-142 was implemented in 1975. More emphasis is being given to learning appropriate social, vocational, and academic skills. The movement is toward making special education a support system to regular education rather than a parallel system. By integrating students with disabilities into the regular education classroom, support can be given to the classroom on a part-time basis, as opposed to developing a classroom for one student.

The Superintendent of Public Instruction reported that several pilot projects focusing on integration of students with disabilities into regular education classrooms in neighborhood schools are underway,

and that every special education unit in North Dakota is involved in integrated education on at least a limited basis. The Superintendent of Public Instruction continues to support local districts that are committed to educating students in the regular classroom to the extent that that option is appropriate. Fifteen special education units received funding to implement activities which promote integrated education. Grants are used to focus on a variety of activities including planning, inservice training, developing pilot sites, and establishing integrated preschools for children who are three to five years old. The placement of a student is based upon the

student's skills and needs. Benefits of integration include improvements in the attitude and eagerness of students with disabilities to attend school and to learn social skills. Nonhandicapped students also benefit by learning to value and appreciate people with differing abilities and by learning how to help and feel comfortable around people with disabilities.

Conclusion

The committee accepted the report on pilot projects integrating handicapped children into regular education classrooms.

Enrollment Category	1976-77	1977-78	1978-79	1979-80	1980-81	1981-82	1982-83	1983-84	1984-85	1985-86	1986-87	1987-88	1988-89	Five-Year Average	Current Weighting Factors 1990-91
Preschool							*	1.84	1.47	1.54	1.43	1.46	1.41	1.462	1.01
Kindergarten	.52	.55	.53	.52	.54	.55	.52	.54	.49	.49	.50	.50	.49	.494	.4525-.64
Rural (1-8)	1.38	1.11	1.13	1.16	1.68**	1.33	1.33	1.15	1.47	1.31	1.17	1.17	1.17	1.258	1.28
Elementary (1-6) 99	1.05	1.11	1.12	1.15	1.13	1.17	1.17	1.17	1.17	1.18	1.18	1.20	1.18	1.182	1.09
Elementary (1-6) 100-999	.96	.95	.94	.94	.92	.92	.93	.90	.91	.92	.91	.90	.91	.91	.905
Elementary (1-6) 1,000	.95	.95	.94	.94	.93	.93	.94	.93	.94	.94	.95	.96	.94	.946	.95
Grades 7 and 8	.99	1.04	1.03	1.03	1.04	1.06	1.01	.98	1.01	1.02	1.04	1.03	1.03	1.026	1.01
High school (9-12)															
550 or more pupils	1.10	1.08	1.10	1.08	1.09	1.11	1.11	1.08	1.09	1.09	1.08	1.08	1.09	1.086	1.14
150-549	1.02	1.01	1.00	1.00	1.00	1.08	1.11	1.17	1.20	1.17	1.13	1.13	1.16	1.158	1.24
75-149	1.06	1.04	1.04	1.05	1.07	1.10	1.14	1.16	1.20	1.21	1.19	1.20	1.24	1.208	1.335
74 or less	1.25	1.26	1.23	1.27	1.30	1.31	1.38	1.43	1.43	1.42	1.41	1.45	1.47	1.436	1.625
Average cost per pupil	\$1,212	\$1,376	\$1,544	\$1,741	\$1,957	\$2,392	\$2,477	\$2,683	\$2,736	\$2,837	\$2,817	\$2,871	\$3,029	\$2,858	XXX

* Data not available for preschool prior to the 1983-84 school year.

** Error in data reporting.

Cost of education ratios are calculated by dividing the statewide average cost per pupil for each of the enrollment categories by the statewide average cost per pupil for all pupils. The ratios reflect only the amount that was spent and do not reflect the need for new programs or enhancements to existing programs. The ratios reflect cost economics that were instituted by schools to the extent that the ratios did not increase as dramatically as most cost indices. Per-pupil cost of education figures do not include the cost of student activities, transportation, food services, or building expenditures.

ELECTIONS COMMITTEE

Senate Bill No. 2476 (1989) established a Legislative Council interim Committee on Elections to consider all aspects of the election process with emphasis on new voting concepts that would make the process more timely and cost effective. In addition, the bill required the committee to adopt guidelines counties must use in preparing proposals for a mail ballot election and to solicit proposals from counties that had fewer than 2,000 votes cast at the last general election and fewer than 1,000 votes cast at each of the last two primary elections. Under the bill, the committee was required to accept the proposals of one or two counties or reject all proposals to conduct a mail ballot election. The committee was assigned House Concurrent Resolution No. 3035, which directed a study of the primary election process, with emphasis on developing recommendations for a mechanism for selecting nominees that is timely and cost effective.

Committee members were Representatives William E. Kretschmar (Chairman), Lynn W. Aas, LeRoy G. Bernstein, Steve Gorman, Richard Kouba, Clarence Martin, Jack Murphy, Grant H. Shaft, and Kelly Shockman; Senators Ray Holmberg, Rick Maixner, Rolland W. Redlin, and F. Kent Vosper; and Citizen Members Austin G. Engel, Jr., Mark A. Johnson, Mike McLeod, Edward T. Schafer, and Susan A. Ritter. Senate Bill No. 2476 provided that one of the citizen members must be the president, or a designee, of the County Auditors Association. Marlan Hvinden was initially appointed to the committee to represent the County Auditors Association. After the first meeting, he was replaced by Mae Streich. After the fourth meeting, she was replaced by Susan A. Ritter.

The report of the committee was submitted to the Legislative Council at the biennial meeting of the Council in November 1990. The report was adopted for submission to the 52nd Legislative Assembly.

ELECTION PROCESS STUDY

Background

In recent elections, voter participation has been decreasing while the costs of conducting the elections have been increasing. The goal of the election process study was to review the election process and to explore innovative methods through which other states have addressed the problem of the rising costs of elections and low voter participation. Specifically, the focus of the study was to determine whether voting by mail is feasible and desirable.

Mail Ballot Elections in Other States

A handful of states, including Montana, Kansas, California, Oregon, Washington, and Minnesota permit voting by mail in certain elections.

In Montana, political subdivisions, by resolution of the governing body, may request to hold certain elections by mail ballot. The local election administrator must determine whether a mail ballot election is economically and administratively feasible and either approve or reject the request for a mail ballot election. Even if a request has not been received from

a governing body of a political subdivision, an election administrator may conduct a mail ballot election unless the governing body of a political subdivision files an objection. Mail ballot elections are permitted in Montana for elections in political subdivisions required to hold annual elections, elections in a city of the third class if all of the candidates whose names appear on the ballot are candidates for offices to be elected without party designation, county elections, and special elections called by a local government unit for the purpose of submitting one or more ballot issues to its qualified electors if the election is not held in conjunction with a statutorily scheduled election. Mail ballot elections may include elections that involve candidates and ballot issues.

In Kansas, mail ballot elections may be held in political subdivisions only for nonpartisan elections where candidates are not elected, retained, or recalled. The election must be authorized by the county election officer and approved by the Secretary of State. A mail ballot election may not be held on the same day as another election in which the qualified electors of the government subdivision are eligible to cast ballots.

In Oregon, county clerks under the supervision of the Secretary of State may conduct elections by mail in a county or a city. The county clerk must consider requests from local governing bodies and determine whether a mail ballot election is economically and administratively feasible. The county clerk is required to notify counties, cities, or districts in which the clerk intends to conduct a mail ballot election no later than the 50th day before the election.

In California, local, special, or consolidated elections may be conducted by mail if the governing body of the local agency authorizes the use of mail ballots, the election does not occur on the same date as a statewide direct primary election or statewide general election, and the election is either an election in which no more than 1,000 registered voters are eligible to participate, a maximum property tax rate election, an election on a measure or measures restricted to the imposition of special taxes or expenditure limitation overrides in a city, county, or special district with 5,000 or fewer registered voters, an election on the issuance of general obligation water bonds, or other specified local elections held by special districts.

In Washington, mail ballot elections may be held at any primary, general, or special election in a precinct having fewer than 100 registered voters. Counties, cities, towns, or districts may request that a nonpartisan special election be conducted by mail ballot. The county auditor may approve or reject the request. A special election may not be conducted by mail ballot in any precinct with more than 100 registered voters if candidates for partisan office are to be voted upon.

In Minnesota, the legislature passed a bill in 1987 which allowed counties or municipalities to request the approval of the Secretary of State to submit up to two ballot questions to the voters by mail. The Minnesota law contained an expiration date of March 30,

1989; however, the 1989 legislature enacted a permanent mail ballot election law. The mail ballot election law enacted in 1989 provides that a county, municipality, or school district may apply to the county auditor for permission to conduct a special election by mail ballot. No more than two questions may be submitted at a mail ballot election, and no offices may be voted on.

Mail Ballot Experiment

Because of the requirements in Senate Bill No. 2476, only Billings, Golden Valley, Oliver, Renville, Sheridan, Sioux, and Slope counties were eligible to submit proposals to conduct the 1990 primary election by mail ballot.

The committee established guidelines for counties to use in preparing proposals to conduct a mail ballot election. Under the guidelines developed by the committee (1) at least one polling place in the county must be open on the day of the election for voting by paper ballot; (2) the county auditor must mail an application form for a mail ballot to each person listed in each precinct's pollbooks from the last general election and place an application form and notice that mail ballot applications may be obtained from the county auditor in the official county newspaper; (3) the county auditor, with the approval of the majority of the board of county commissioners, must appoint one election board for the purpose of counting mail ballots and one election board for the purpose of counting ballots at each polling place open on the day of the election; (4) a mail ballot could be counted only if postmarked no later than the day before the election; (5) the mail ballot election board could begin verifying signatures on the mail ballot return identification envelopes and mail ballot applications at the same time the other polling places in the county were opened; (6) the mail ballot election board could begin counting the mail ballots one hour before the polling places close; and (7) when applicable, all election procedures provided in North Dakota Century Code (NDCC) Title 16.1 must be followed and that absentee voter ballots must be available as provided in NDCC Chapter 16.1-07.

Representatives of the Secretary of State's office testified that voting by mail ballot would require voter registration. They said the other states where mail ballot elections have been held all have voter registration.

Renville County was the only county to submit a proposal to conduct a mail ballot election. The committee accepted Renville County's proposal and requested the Legislative Council to reimburse Renville County for up to \$4,800 of its expenses in conducting the election as provided for in Senate Bill No. 2476.

The Renville County Auditor reported that the mail ballot election experiment was very successful. She said voter participation increased and the cost of holding the election was less than it would have been if the election were not held by mail ballot. Testimony indicated that there were very few complaints with respect to the mail ballot election experiment and that other county auditors were interested in conducting future elections by mail ballot. Supporters of voting by mail testified that the mail ballot process

allows voters to research the issues and candidates and become more informed voters.

Because of the success of the mail ballot experiment, the committee considered two bill drafts relating to mail ballot elections. One bill draft provided that a political subdivision may conduct an election by mail ballot if the election is not held in conjunction with a statewide election. The other bill draft provided that the board of county commissioners of a county may conduct a primary election by mail ballot.

Petition Time Deadlines

The committee received testimony indicating that there is some confusion concerning time deadlines for the submission of petitions. North Dakota law does not establish a specific time deadline for the submission of initiative, referral, or recall petitions. The committee considered a bill draft that provided that initiative, referral, and recall petitions must be submitted to the Secretary of State by 5:00 p.m. on the day designated as the deadline for submitting the petition.

Ballot Structure

A small number of counties in the state use electronically read paper ballots. In some cases in those counties, the no-party ballot has been placed on the same page as the party ballots. North Dakota Century Code Section 16.1-11-24 provides that there must be a separate no-party ballot at all primary elections. Testimony indicated that when the no-party ballot is placed on the same page as the party ballots, many ballots are not properly completed. The committee considered a bill draft that would have required the county auditor to prepare the no-party ballot in a manner to indicate clearly the separation of the no-party list of offices and candidates from the party list of offices and candidates and place a statement on the no-party ballot informing the elector that the elector may vote for no-party candidates in addition to the party candidates.

Conflicts in North Dakota Election Laws

During the latter portion of the interim, the Secretary of State testified that there are conflicting provisions and inconsistencies in the North Dakota election laws. The Secretary of State said six areas must be addressed regarding the election laws:

1. The accessibility of all polling places to the handicapped and elderly by the end of 1992, as required by federal law;
2. The training of all election officials;
3. The conflicting and inconsistent requirements relating to the circulation and certification of various petitions;
4. The various residency requirements for different offices;
5. The various inconsistencies regarding time deadlines, financial disclosure statements, and recount procedures for no-party ballots; and
6. The implementation of programs to assist and educate voters because voter participation is declining.

In addition, the Secretary of State testified that the concept of consolidating all local elections with

statewide elections should be studied. The committee considered a resolution draft that directs the Legislative Council to conduct a study of North Dakota election laws during the next interim.

Referral Petition Signature Requirements

The committee received testimony that because only about 13,000 signatures are required to refer or initiate measures, measures have been placed on the ballot by petition sponsors who have obtained a large percentage of the signatures at shopping malls or at large public events.

Article III of the Constitution of North Dakota provides that the people reserve the power to propose and enact laws and constitutional amendments by the initiative, to approve or reject legislative acts by the referendum, and to recall certain elected officials. Sponsors of a petition to refer a measure must present the petition to the Secretary of State for approval. The request for approval must be presented over the names and signatures of 25 or more electors as sponsors, one of whom must be designated as chairman of the sponsoring committee. If the petition is in proper form and contains the names and addresses of the sponsors and the full text of the measure, the Secretary of State must approve the petition for circulation. The petition may be circulated only by electors who must swear that electors signing the petition signed in their presence. The signers must write the date of signing and their post-office address on the petition. A petition may be submitted to the Secretary of State if signed by electors equal in number to two percent of resident population of the state at the last federal decennial census.

The current Article III of the Constitution of North Dakota became effective on January 1, 1979, after approval by the voters in November 1978. Since its adoption, there have been no amendments to Article III. However, there have been proposals to amend the signature requirements.

The 1981 Legislative Assembly considered but failed to adopt two resolutions for the amendment of Article III. Senate Concurrent Resolution No. 4013 would have required that a petition to initiate or refer a measure must be signed by electors from each county of the state, and that the number of signatures from each county must be equal in number to two percent of the resident population of the county at the last federal decennial census. Senate Concurrent Resolution No. 4014 (1981) would have required an initiative or referral petition to be signed by electors from at least 40 counties, the minimum number of signatures from each of the 40 counties to be equal in number to one and one-half percent of the resident population of the county at the last federal decennial census, and the total number of signatures to be equal in number to one and one-half percent of the resident population of the state at the last federal decennial census.

Selected Other States' Petition Requirements

Montana

The electors of Montana may refer a legislative Act, except an appropriation of money, by submitting petitions signed by at least five percent of the

qualified electors in each of at least one-third of the legislative representative districts. The total number of signers must be at least five percent of the qualified electors of the state.

South Dakota

Any law that the legislature has enacted may be submitted to a vote of the electors of the state before becoming effective, except laws necessary for the immediate preservation of the public peace, health or safety, and support of the state government and its public institutions. A referendum petition must be signed by not less than five percent of the qualified electors of the state.

Wyoming

An application to refer an Act of the legislature must be signed by at least 100 qualified voters as sponsors and filed with the Secretary of State for certification. The petition must be signed by qualified voters equal in number to 15 percent of those who voted in the preceding general election and resident in at least two-thirds of the counties of the state.

Minnesota

Acts of the Minnesota Legislature may not be referred.

Testimony and Committee Considerations

The committee considered three resolution drafts relating to the signature requirements for petitions to initiate or refer measures or initiate a constitutional amendment. One resolution draft would have increased the number of signatures required to initiate or refer a measure from two percent of the resident population of the state to five percent of the resident population of the state and changed the number of signatures required to initiate a constitutional amendment from four percent of the resident population of the state to five percent of the resident population of the state.

The other two resolution drafts considered by the committee would have required a geographical distribution of signatures. One of the resolution drafts would have required that a petition to initiate or refer a measure or to initiate a constitutional amendment be signed by electors from at least two-thirds of the counties in the state. In addition, the resolution draft would have required that the number of signatures from each county comprising the two-thirds must equal at least 15 percent of the qualified electors voting at the last general election in the county. The total number of signatures required would have had to equal at least 15 percent of the qualified electors of the state voting at the last general election. The other resolution draft would have provided that a petition to initiate or refer a measure or a petition to initiate a constitutional amendment must be signed by electors from at least 50 percent of the legislative districts in the state. The number of signatures from each legislative district comprising the 50 percent would have had to equal at least 15 percent of the qualified electors voting at the last general election in the district. The total number of signatures would

have had to equal at least 15 percent of the qualified electors of the state voting at the last general election.

Proponents of the resolution drafts that would have required a statewide distribution of signatures contended that changes are necessary in the initiative and referral process. They argued that the petition process should be more representative of the people throughout the state, not just 13,000 people who signed petitions in shopping malls and public events in the large cities.

Opponents of the resolution drafts generally agreed that some changes are necessary in the initiative and referral process. However, they contended that requiring a geographical distribution of signatures would allow a minority of the counties or legislative districts to block an initiative or a referral. In addition, proposing changes in the referral process shortly after the voters successfully referred several legislative acts might be construed as "sour grapes" by the people.

Recommendations

The committee recommends House Bill No. 1032 to allow political subdivisions to conduct an election by mail ballot if the election is not held in conjunction with a statewide election. The bill requires the governing body of a political subdivision conducting a mail ballot election to designate at least one polling place in the political subdivision to be open on the day of the election for voting in the usual manner. The bill requires the official responsible for conducting elections in the political subdivision to mail an application form for a mail ballot to each person listed in the pollbooks of the political subdivision or in the election register of the political subdivision, if applicable, on one date no sooner than the 45th day before the election and no later than the 30th day before the election. In addition, the bill requires the election official to publish in the official newspaper of the political subdivision an application form for a mail ballot and a notice that additional mail ballot applications may be obtained from the election official. The bill requires the election official to mail an official mail ballot with a return identification envelope and instructions sufficient to describe the voting process to each qualified elector who returns a properly completed application form to the election official by 5:00 p.m. on the fourth day before the election. The voting instructions must contain a statement informing the elector that the elector is entitled to complete the mail ballot in secrecy. The elector may return the completed mail ballot to the election official by mail or, before 6:00 p.m. on the day of the election, to any other place of deposit designated by the election official. If the elector returns the ballot by mail, the elector must provide the postage, and the ballot must be postmarked no later than the day before the election. The bill requires the election official to appoint a special election board for the purpose of counting mail ballots. The bill provides that when applicable all election procedures provided in Title 16.1 must be followed.

The committee recommends House Bill No. 1033 to allow the board of county commissioners of a county to conduct a primary election by mail ballot. The procedure provided in the bill for the administration

of the mail ballot election is the same as that provided in House Bill No. 1032, which allows political subdivisions to conduct elections by mail ballot.

The committee recommends Senate Bill No. 2035 to provide that a petition to initiate or refer a measure or to recall an elected official must be submitted to the Secretary of State by 5:00 p.m. on the day designated as the deadline for submitting the petition.

The committee recommends Senate Concurrent Resolution No. 4001 to direct the Legislative Council to conduct a study of North Dakota election laws, with an emphasis on resolving inconsistencies and conflicting provisions and on establishing more uniform and effective election procedures.

The committee makes no recommendation concerning the problem with the distinction between the party ballots and the no-party ballot on the primary election ballot. However, committee members generally agreed that the issue should be addressed during the next interim as a part of the study of the election laws.

The committee makes no recommendation with respect to changing the signature requirements for petitions to initiate or refer a measure or initiate a constitutional amendment.

PRIMARY ELECTION PROCESS STUDY

Background

House Concurrent Resolution No. 3035 directed a study of the primary election process, with emphasis on developing recommendations for a mechanism for selecting nominees which is timely and cost-effective. The study was proposed because primary elections are costly for counties and voter participation is usually low in primary elections. In addition, the study was partly the result of two bills considered and defeated by the 1989 Legislative Assembly. House Bill No. 1069 would have eliminated the primary election, and House Bill No. 1250 would have moved the primary election from June to September.

History of the Primary Election in North Dakota

Primary elections in North Dakota were held in June from 1906 until 1966. The 1965 Legislative Assembly changed the primary election date from June to the first Tuesday in September. The 1979 Legislative Assembly moved the primary election to the second Tuesday in June and provided for a presidential preference primary. That bill was vetoed by the Governor, but was subsequently approved by a two-thirds majority of the members of the Senate and the House of Representatives. The bill was referred and was approved by the electors at the primary election in September 1980.

North Dakota Primary Election Law

North Dakota Century Code Section 16.1-11-01 provides that on the second Tuesday in June of every general election year, a primary election must be held for the nomination of candidates for the offices of member of the United States House of Representatives, county officers, state officers, judges of the Supreme Court and district courts, members of the Legislative Assembly, county commissioners, and United States Senators. Section 16.1-11-06 provides

that each candidate for United States Senator, United States Representative, state office except the office of state senator or state representative, and judge of the Supreme Court and district courts must, not more than 70 nor less than 60 days prior to a primary election, present to the Secretary of State a certificate of endorsement or a petition to place the candidate's name on the ballot. The certificate of endorsement must be signed by the state chairman of a legally recognized political party, the petition must contain the signatures of qualified electors, the number being dependent upon the office. Section 16.1-11-11 provides that a candidate for a county or district office must present to the county auditor of the county in which that person resides either a certificate of endorsement or a petition to place the candidate's name on the ballot not more than 70 nor less than 60 days before the primary election.

Presidential Preference Primary Election

North Dakota Century Code Section 16.1-11-02 provides that a presidential preference primary must be held concurrently with the statewide primary election in presidential election years. Section 16.1-11-23 provides that ballots for presidential preference primary elections must be combined with the primary election ballot.

Primary Election Ballot

In addition to nominations for state, county, and legislative district offices, constitutional amendments or measures, initiated measures, and referred measures may be voted upon at primary elections. Political subdivisions are authorized to place various measures, including county consolidation plans and city home rule charters, on the ballot at a primary election. School boards are permitted to hold school board elections in conjunction with a primary election.

Selected States' Laws Regarding Primary Elections

In 1988, primaries were held for nomination of state officials by five states in March, one state in April, eight states in May, 11 states in June, nine states in August, 15 states in September, and one state in October. In 1988, 37 states held presidential primaries. On March 8, 1988, 20 states held presidential primaries or caucuses.

Testimony and Committee Considerations

The committee surveyed five neighboring states regarding interest in conducting a regional presidential primary election. The survey respondents generally stated that there was little support in their states for a regional presidential primary election.

The committee considered a bill draft that would have eliminated the primary election. The bill draft would have established procedures for certificates of nomination to place a name on the general election ballot for party and no-party offices and would have removed all references to the primary election from the North Dakota Century Code.

Proponents of eliminating the primary election testified that although one of the purposes of the primary election is to eliminate some candidates, the primary election has not accomplished that purpose. In addition, the average cost of the last five primary elections has been about \$600,000 per election and the percentage of eligible voters voting at the primary election has been less than half that of the voters voting at the general election. A June primary election also extends the length of campaigns and makes campaigns more expensive.

The Secretary of State testified that eliminating the primary election could result in having a larger number of candidates on the general election ballot which could result in plurality government. Eliminating the primary election would also increase the role of political parties at state conventions and increase the power of party bosses while diminishing the role of the political parties at the local level.

In addition to the bill draft that would have eliminated the primary election, the committee discussed the feasibility and desirability of changing the date of the primary election. The Secretary of State testified that an August primary date would be easier to administer than a spring primary date. He also testified that the impact on counties would be significant if the primary were held in September because of the counties' budget cycle.

It was suggested that voter participation may be greater if elections were not held on Tuesdays. Although elections have been traditionally held on Tuesday, several states conducted primary elections in 1988 on days other than Tuesday.

Committee Recommendations

The committee makes no recommendations concerning eliminating the primary election or changing the date of the primary election.

GAME AND FISH COMMITTEE

The Game and Fish Committee was assigned two studies. House Concurrent Resolution No. 3076 directed a study of the appropriateness of the amount and current basis for the determination of motorboat license fees and the use and allocation of the interest income from the game and fish operating fund. Senate Concurrent Resolution No. 4004 directed a review of the effect of legislation enacted by the 1989 Legislative Assembly relating to the bonding of county auditors and agents appointed by county auditors to issue game and fish licenses or stamps and a comprehensive study of the state's game and fish laws and rules.

Committee members were Senators Rick Maixner (Chairman), Ben Axtman, Adam Krauter, Dean J. Meyer, Walter A. Meyer, and Gary J. Nelson and Representatives Jim Brokaw, Lyle L. Hanson, Orlin M. Hanson, Gary Knell, Bill Oban, Alice Olson, Vince Olson, Ben Tollefson, and Wilbur Vander Vorst. Senator R. V. Shea, prior to his death in March 1990, and Representative Gerald A. Halmrast, prior to his death in September 1990, were members of the committee.

The report of the committee was submitted to the Legislative Council at the biennial meeting of the Council in November 1990. The report was adopted for submission to the 52nd Legislative Assembly.

MOTORBOAT LICENSE FEES

House Concurrent Resolution No. 3076 reflected the Legislative Assembly's concern regarding the appropriateness of the amount and current basis for the determination of motorboat license fees. The impetus for the study was the fact that boat license fees are based upon the length of the vessel as opposed to age or value. The resolution advocated that the appropriateness of this method of determining motorboat license fees and alternative methods of setting motorboat license fees should be reviewed by the Legislative Council. It was also noted that the administrative expenses of licensing boats may exceed revenues generated by license fee collections.

Background

North Dakota Century Code (NDCC) Section 20.1-03-12(23) governs the licensure and operation of watercraft used for hire. This provision was enacted by the 1953 Legislative Assembly. As enacted, the license fee for a watercraft used for hire capable of carrying from two to five adults or a like weight in baggage was \$1; six or seven adults, \$1.50; eight or nine adults, \$2; 10 to 15 adults, \$5; and 16 or more adults, \$10. These license fees were increased by the 1981 Legislative Assembly. The new license fee for a watercraft used for hire capable of carrying from two to five adults or a like weight in baggage is \$6, six or seven adults, \$9; eight or nine adults, \$12; 10 to 15 adults, \$24; and 16 or more adults, \$30.

North Dakota's first motorboat (as contrasted to watercraft used for hire) license fee requirement was enacted by the 1959 Legislative Assembly. The fee was included in a comprehensive boating safety,

operation, registration, equipment, and enforcement law. House Bill No. 776, codified as NDCC Chapter 61-27, required that "[e]very motorboat propelled by a motor having ten horsepower or more . . . be numbered." In addition to the numbering requirement, a fee of \$3 was required to obtain the certificate of number. The certificate was valid for a period of three years.

The boating laws were moved from Title 61 to Title 20.1 by the game and fish law revision recommended by the Legislative Council to the 1973 Legislative Assembly. In 1975 the Legislative Assembly amended NDCC Section 20.1-13-02 to extend the numbering and licensing requirements for motorboats to "[e]very motorboat propelled by a motor on the waters of this state . . ."

The first change in motorboat license fees occurred in 1981. North Dakota Century Code Section 20.1-03-12(22) was amended to provide:

For a motorboat certificate of number and license, the following license fees shall be used: Each motorboat under sixteen feet in length, and all canoes, regardless of length, powered by a motor, six dollars. Each motorboat sixteen feet in length and over, excluding canoes, fifteen dollars. It is the intent of the legislative assembly that the increase in motorboat license fees, as provided in this section, be used for providing matching funds for construction and installation of boat launching facilities.

The 1989 Legislative Assembly amended NDCC Section 20.1-03-12(22) to provide:

For a motorboat certificate of number and license: Each motorboat under sixteen feet [4.88 meters] in length, and all canoes, regardless of length, powered by a motor, nine dollars. Each motorboat sixteen feet [4.88 meters] in length and over but shorter than twenty feet [6.1 meters] in length, excluding canoes, twenty-one dollars. Each motorboat twenty feet [6.1 meters] in length or over excluding canoes, thirty dollars. It is the intent of the legislative assembly that the increase in motorboat license fees, as provided by the 1981 and 1989 amendments to this subsection, be used for providing matching funds for construction and installation of boat launching facilities, fish cleaning and comfort stations, boating enforcement, boating safety education, and boat registration administration.

According to the Game and Fish Department, there were 40,494 boats registered in 1988. Of this total, 39,815 were motorboats and 679 were canoes. Of the 39,815 motorboats, 18,927 were less than 16 feet in length and 20,888 were 16 feet and over in length. Of the 20,888 boats 16 feet and over in length, 18,732 were less than 20 feet in length and 2,156 were 20 feet in length or over. Revenues from boat license fees for the 1989-91 biennium are estimated at between \$550,000 and \$600,000 and for the 1991-93 biennium at between \$30,000 and \$50,000. The variance is caused by the three-year registration cycle. The Game and Fish Department budgeted

\$1,490,000 for boating programs for the 1989-91 biennium. Of this total, \$885,000 are federal funds and \$605,000 are state funds. The funds are for boating access, including ramps and related facilities, boating enforcement, boat registration costs, and boating safety programs.

In addition to reviewing North Dakota law concerning motorboat license fees, the committee also reviewed the motorboat license fees and provisions of Minnesota, South Dakota, Montana, and Wisconsin.

Testimony

The committee received testimony from representatives of the Game and Fish Department and the North Dakota Sportfishing Congress concerning the amount of motorboat license fees. Representatives of the Sportfishing Congress testified that the current motorboat license fee schedule is appropriate and fair.

Conclusion

The committee makes no recommendation concerning the motorboat license fees study.

USE AND ALLOCATION OF INTEREST INCOME FROM THE GAME AND FISH OPERATING FUND

House Concurrent Resolution No. 3076 also reflected the Legislative Assembly's concern regarding the use and allocation of the interest income from the game and fish operating fund. The basis for the study of the use and allocation of the interest income from the game and fish operating fund was the fact that all interest income generated by the game and fish operating fund is deposited in the Game and Fish Department private land habitat improvement fund. Although moneys from this fund may be used for the acquisition of fish habitat and to defray the expenses of federally sponsored conservation practices that are considered especially beneficial to fish, some persons advocated that interest income generated from the game and fish operating fund be used for lakefront development and similar programs.

Background

At the 1978 general election, the electorate approved Initiated Measure No. 3 on the general election ballot on November 7, 1978, which provided:

All income of the state game and fish department, deposited by the state game and fish commissioner with the state treasurer shall be credited to the state game and fish fund and said fund shall be used only by the state game and fish department; and all money derived from the investment of said fund or portions thereof shall be credited to said fund.

In an effort to allocate the interest income from the game and fish operating fund, the Game and Fish Department private land habitat improvement fund was established by the 1979 Legislative Assembly. The game and fish operating fund consists of hunting and license fees; application fees for elk, moose, and bighorn sheep hunting licenses; and other revenue of the department and is used for Game and Fish Department programs and administration. North

Dakota Century Code Section 20.1-02-05(18) and (19) establish and govern the Game and Fish Department private land habitat improvement fund. These subsections provide that the Game and Fish Commissioner may:

18. Provide for the funding of a private land habitat improvement program with moneys derived from the interest earned on the game and fish fund. The state treasurer shall place the interest money in a special fund called the "game and fish department private land habitat improvement fund".
19. Carry out a private land habitat improvement program by:
 - a. Entering into cost-sharing agreements with landowners or agencies working on private land to help defray all or a portion of their share of certain federally sponsored conservation practices considered beneficial to fish and wildlife.
 - b. Annual leasing and development of fish and wildlife habitat or sport fishing areas on private land.
 - c. Carry out practices which will alleviate depredations caused by big game animals.

The following amounts have been expended from the Game and Fish Department private land habitat improvement fund:

Fiscal Year	Amount Expended
1980	\$ 29,910
1981	106,385
1982	306,790
1983	505,098
1984	528,769
1985	419,140
1986	436,645
1987	427,099
1988	326,653
1989	599,220

The cash balance of the private land habitat improvement fund at the beginning of the 1989-91 biennium is estimated to be \$1,500,000. The estimated revenue for the 1989-91 biennium is \$800,000 with estimated expenditures of \$1 million. Thus, the estimated cash balance of the private land habitat improvement fund on June 30, 1991, is \$1,200,000.

Testimony

Representatives of the North Dakota Sportfishing Congress testified that allocating interest income from the game and fish operating fund under a line item in the appropriation bill for the Game and Fish Department entitled "deer depredation" is misleading in that these moneys are used for fishing purposes

as well as hunting purposes. Representatives of the Game and Fish Department informed the committee that even though the interest income from the game and fish operating fund that is placed in the private land habitat improvement fund is included under a line item entitled "deer depredation." The Game and Fish Commissioner has the authority to expend these funds on conservation practices and to lease or acquire habitat especially beneficial to fish. However, under state law, the department may only expend these funds for projects on private lands.

Throughout the interim, representatives of the North Dakota Sport-fishing Congress advocated that additional private land habitat improvement fund moneys be used for enhancing fishing resources. However, the committee received information from representatives of the Game and Fish Department that historically fishing and boating programs have not supported themselves and the majority of funding for these programs has come from revenues derived from hunting sources.

Conclusion

The committee makes no recommendation concerning the use and allocation of interest income from the game and fish operating fund study.

BONDING OF COUNTY AUDITORS AND AGENTS APPOINTED BY COUNTY AUDITORS TO ISSUE GAME AND FISH LICENSE OR STAMPS

Senate Concurrent Resolution No. 4004 reflected the Legislative Assembly's concern regarding the laws and rules concerning the issuance of game and fish licenses and the role of county auditors in the issuance of game and fish licenses.

Background

The 1989 Legislative Assembly amended NDCC Section 20.1-03-17 to allow county auditors to require agents appointed by them to distribute hunting and fishing licenses or stamps to show evidence of adequate financial security before the agents may be appointed to issue hunting and fishing licenses. Adequate financial security may be evidenced by a letter of credit, cash deposit, or bond. The bond may be obtained through the state bonding fund or through a private bonding firm. North Dakota Century Code Section 26.1-21-09.1 provides that the annual premium for such a bond obtained through the state bonding fund is \$10. However, the Commissioner of Insurance may reduce or waive the premium if it is determined that premiums are sufficient to cover potential claims against the state bonding fund. In addition, the Commissioner of Insurance is required to determine the conditions and qualifications of agents bonded through the state bonding fund. The amount of coverage for bonds obtained through the state bonding fund is limited to \$5,000 per agent per year.

Testimony and Committee Considerations

The committee received information that 21 county auditors are requiring agents appointed to distribute hunting and fishing licenses or stamps to be

bonded. There are 138 agents registered with the state bonding fund and the fund has collected \$1,380 in premiums. Representatives of the state bonding fund testified that the bonding system for license agents is working very well.

The committee studied a proposal to require county auditors retaining a portion of the fee for issuing game and fish licenses or stamps to remit the money to the county treasurer for deposit in the general fund of the county. Under the proposal, county auditors would be entitled to reimbursement from the county for all personal expenses incurred by the auditor in the issuance of game and fish licenses.

Conclusion

The committee makes no recommendation concerning the bonding of county auditors and agents appointed by county auditors to issue game and fish licenses or stamps study.

GAME AND FISH LAWS AND RULES

Senate Concurrent Resolution No. 4004 also reflected the Legislative Assembly's concern regarding North Dakota's game and fish laws and rules. This resolution was recommended by the Legislative Council's 1987-88 interim Judicial Process Committee as a result of its study of the state's game and fish laws and rules, with an emphasis on those laws and rules concerning the issuance of game and fish licenses and the role of county auditors in the issuance of game and fish licenses.

Background

North Dakota's game and fish laws are contained in NDCC Title 20.1. This title is divided into 14 subject areas—general provisions (Chapter 20.1-01); Game and Fish Department (Chapter 20.1-02); licenses and permits (Chapter 20.1-03); birds (Chapter 20.1-04); big game animals (Chapter 20.1-05); fish, frogs, and turtles (Chapter 20.1-06); fur-bearing animals (Chapter 20.1-07); orders and proclamations of the Governor (Chapter 20.1-08); propagation of protected birds and animals (Chapter 20.1-09); confiscation (Chapter 20.1-10); game refuges and game management areas (Chapter 20.1-11); private shooting preserve (Chapter 20.1-12); boating regulations (Chapter 20.1-13); and falconry (Chapter 20.1-14).

The Game and Fish Commissioner has adopted rules relating to the general administration of the Game and Fish Department, wildlife management, fishery management, fish and wildlife management, and boat safety. North Dakota Administrative Code Article 30-01 governs the organization and functions of the Game and Fish Department; Article 30-02 governs aircraft hunting permits, falconry, and the operation of private game bird shooting preserves; Article 30-03 regulates bait vendors, private fish hatcheries, construction and use of fishhouses for winter fishing, commercial frog licenses and fishing contests; Article 30-04 governs fish and wildlife management; and Article 30-05 relates to boat safety.

Committee Considerations

The committee studied 33 separate proposals concerning North Dakota's game and fish laws and rules.

The committee received testimony from the North Dakota Game and Fish Commissioner, representatives of the North Dakota Game and Fish Department, and representatives from the various conservation and sportsmen's organizations active in the state throughout the interim.

Posting

The committee received information concerning North Dakota posting laws and the posting laws of South Dakota, Minnesota, and Montana. Under North Dakota law, the landowner or tenant may prohibit hunters from hunting on private land by placing signs alongside the public highway or the land giving notice that no hunting is permitted on that land.

South Dakota law governing fishing, hunting, and trapping on private land is based on a different premise than is North Dakota law. Rather than requiring the landowner to post that person's land in order to restrict hunting, South Dakota prohibits a person from hunting on private land unless that person has received permission from the landowner. South Dakota law makes it a Class 2 misdemeanor to violate any of the provisions of the South Dakota posting laws. In South Dakota, a Class 2 misdemeanor is punishable by 30 days' imprisonment in a county jail or \$100 fine, or both.

Minnesota law governing hunting on private land differentiates between agricultural land and other types of land. If the property in question is agricultural, it may not be entered unless the hunter first obtains permission from the owner, occupant, or lessee. If the property is not agricultural, it may be entered for hunting purposes unless it is posted.

Montana's posting law is similar to North Dakota's in that a landowner must post that person's land in order to prevent hunters from entering the property in question. If a person enters or remains unlawfully in or upon the premises of another, that person has committed the offense of criminal trespass to property. This offense is punishable by fine not to exceed \$500, imprisonment for a term not to exceed six months, or both.

The committee also reviewed the four proposals relating to the posting of lands to prohibit hunting which were considered by the 1989 Legislative Assembly, none of which were enacted. Senate Bill No. 2490 would have provided that the posting of land to prohibit hunting on both sides of a road constituted posting of the road, and that the posting of land on one side of a road constituted posting to the centerline of the road. Senate Bill No. 2265 would have provided that if land on both sides of a road is posted to prohibit hunting, the prohibition does not include the road. House Bill No. 1656 would have prohibited hunting or trapping on private land unless the landowner had given permission or the owner had posted "hunting allowed" signs. House Bill No. 1153 would have required that the posting date appear on a posting sign and would have made the posting effective for one year from the posting date.

The committee studied a proposal to close all land to hunting unless the land is posted by the landowner or tenant as open to hunting. Under the proposal, the owner or tenant of land would post the land as being

open to hunting by placing signs alongside the public highway or the land giving notice that hunting is permitted on the land. Several landowners, as well as the North Dakota Farm Bureau, supported this proposal. The committee received testimony that many landowners experience damage to property caused by hunters and that the burden of posting should be placed on the sporting public. The committee received testimony from various conservation and sportsmen's groups, including the Cass County Wildlife Club, opposing the proposal. These groups advocated that sportsmen-landowner problems be resolved through negotiation instead of legislation. The committee received testimony that these groups had attempted to improve sportsmen-landowner relations through establishing the Report All Poachers (RAP) program, implementing hunter education programs, and supporting 100 percent payment in lieu of taxes for land acquired by state and federal entities. In addition, the committee received testimony that sportsmen's groups had supported legislation proposed by landowners that posting at gates and 880-yard intervals, as opposed to 440-yard intervals, be sufficient to post land legally; legislation restricting hunting near occupied buildings; legislation prohibiting off-road hunting; and the establishment of the North Dakota Landowner-Sportsman Council.

The committee studied a proposal to increase the penalty for being on property and hunting on posted land from a Class B misdemeanor to a Class A misdemeanor and to increase the period of license suspension for violating the North Dakota posting laws from six months to three years. This proposal was later amended to establish a graduated criminal penalty for being on property and hunting on posted land and a graduated license suspension period for violating posting laws. This proposal was supported by the Cass County Wildlife Club as well as other sportsmen's groups, individual sportsmen, and landowners.

The committee studied a proposal to allow the Game and Fish Commissioner to conduct lotteries for landowners who do not post their land. Under this proposal, every license to hunt in the state would have a removable coupon affixed to the license which may be detached and submitted to the commissioner for inclusion in a lottery or lotteries conducted by the commissioner. The licenseholder would detach the coupon and give the coupon to the owner of the land on which game was taken. In order to be eligible to participate in a lottery, the landowner must complete the coupon as described by the commissioner, certify that the landowner's land was not posted, and return the coupon to the commissioner. The commissioner would then include all coupons returned to the commissioner in a lottery to be conducted by the commissioner. Under the proposal, the commissioner would have the authority to present appropriate awards to successful lottery entrants. For purposes of the landowner lottery, a landowner is any person who actually farms or ranches land. This proposal was later amended to make the holding of the lottery and the requirement that coupons be affixed to the license discretionary on the part of the commissioner.

The committee received testimony from the Cass County Wildlife Club in support of the proposal. However, the committee received information from the Attorney General that the proposal may violate Section 25 of Article XI of the Constitution of North Dakota which generally prohibits lotteries for other than charitable purposes.

The committee studied a proposal to require the posting date as well as the name and address of the person posting the land appear on the posting sign. In addition, this proposal would have made posting effective for one year from the posting date appearing on the sign.

Licenses and Permits

The committee studied a proposal presented by the Game and Fish Commissioner to allow the commissioner to establish a combination game and fish license. The committee received testimony that a combination game and fish license would be more convenient for sportsmen as well as the Game and Fish Department. Many sportsmen are frustrated by the variety of licenses and stamps required to hunt in North Dakota. This proposal was supported by several sportsmen who appeared before the committee.

The committee studied a proposal to allow guides and outfitters to purchase a license to enable them to provide residents or nonresidents, for compensation, big game guiding and outfitting services and one antlered white-tailed deer license or one male antelope license, or both. Proponents of the proposal indicated that the proposal would be instrumental in establishing the guiding and outfitting industry in North Dakota. The director of the Tourism Promotion Division of the Economic Development Commission testified that the proposal would help to establish a guide and outfitter industry in North Dakota. He indicated that a number of states have enacted similar legislation.

The committee studied a proposal to allow the Game and Fish Commissioner to establish a combination license consisting of a nonresident big game bow license and a nonresident wild turkey bow permit. Representatives of the North Dakota Bow Hunters Association and Bow Hunters of America indicated bow hunting is becoming more popular across the United States and supported the proposal.

Another proposal presented by the Game and Fish Commissioner was to establish licenses for the taking of clams. The Game and Fish Commissioner testified that the Game and Fish Department needed authority to protect clams in the northeastern portion of the state that are being adversely affected by illegal clamming.

Two proposals studied by the committee included a proposal to allow landowners to transfer gratis landowner deer, antelope, or elk hunting licenses to persons eligible to apply for the same type of license sought to be transferred by the landowner. This proposal was opposed by representatives of the Cass County Wildlife Club. Another proposal was to require that individuals actively farm or ranch land in order to receive a gratis landowner hunting license. This proposal was presented by the Game and Fish Commissioner. This proposal also included a sugges-

tion that the minimum amount of land that must be described in an affidavit as being owned by a person in order to obtain a gratis landowner hunting license be increased from a quarter section to a full section. The increase in the amount of land that must be described in the affidavit was opposed by the North Dakota Stockmen's Association. Representatives of the Game and Fish Department testified that the department has experienced a number of problems with people abusing the gratis landowner license system. They indicated that individuals have filed affidavits describing wildlife refuges and land owned by other individuals in their affidavits.

Boating Regulations

The committee studied a proposal presented by the Game and Fish Commissioner to establish a system for the titling of motorboats. Under the proposal, a certificate of title would be required for every resident who owns a motorboat and for which no certificate of title has been issued. The title would be issued through the Game and Fish Department as opposed to the registrar of motor vehicles. The 1987 and 1989 Legislative Assemblies considered proposals concerning the titling of motorboats, but no legislation was enacted. The 1989 proposal was opposed by several groups because the Motor Vehicle Department was to title the motorboats as opposed to the Game and Fish Department. Representatives of the North Dakota Sportfishing Congress testified that any boat titling scheme should be established through the Game and Fish Department and not the Motor Vehicle Department. In addition, representatives of the North Dakota Sportfishing Congress testified that all revenue derived from a motorboat titling requirement should be used for boating and fishing facilities. Representatives of the North Dakota Retail Association supported the proposal because boat dealers face competition from out-of-state dealers who do not pay North Dakota sales tax on boat sales.

The committee studied a proposal presented by the Game and Fish Commissioner to require the State Treasurer to transfer annually from the highway tax distribution fund, before allocation of the fund, to the game and fish fund an amount equal to the tax collected on 70 gallons of motor fuel multiplied by the number of motorboats registered pursuant to NDCC Section 20.1-03-12. Under the proposal, the Game and Fish Department would be required to expend these moneys on constructing, reconstructing, repairing, and maintaining boating facilities. The committee received testimony from the North Dakota Sportfishing Congress that the average motorboat used 70 gallons of gas in 1982-83 and approximately 71 gallons in 1984-85. In a report dated June 9, 1987, the General Accounting Office reported to the United States Congress that the annual fuel consumed per boat in the United States ranges from 44 to 284 gallons per boat. In the General Accounting Office report, Minnesota averaged 101 gallons per boat and Montana averaged 93 gallons per boat. Representatives of the Game and Fish Department testified that there were 42,624 boats registered in 1989 and that by inserting the figure of 70 gallons per boat per year in the formula, the amount of motorboat fuel

tax collected on fuel used in boats would equal \$507,226, which is approximately .8 percent of the highway tax distribution fund. Representatives of the North Dakota Sportfishing Congress testified that the proposal was beneficial to boating and fishing interest groups. However, the committee received testimony from representatives of the Department of Transportation that the highway tax distribution fund should not be used for anything other than public highway purposes.

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

Revenue from gasoline and other motor fuel excise and license taxation, motor vehicle registration license taxes, except revenue from aviation gasoline and unclaimed aviation motor fuel refunds and other aviation motor fuel excise and license taxation used by aircraft, after deduction of cost of administration and collection authorized by legislative appropriation only, and statutory refunds, shall be appropriated and used solely for construction, reconstruction, repair and maintenance of public highways, and the payment of obligations incurred in the construction, reconstruction, repair and maintenance of public highways.

Since the proposal concerning the allocation of motorboat fuel taxes may conflict with this constitutional provision, the committee examined a proposal to amend Section 11 of Article X of the Constitution of North Dakota. Under the proposal, revenue from gasoline and motor fuel excise taxes derived from gasoline and fuel used in vessels and recreational vehicles would be available for constructing, reconstructing, repairing, and maintaining public facilities related to vessels and recreational vehicles.

The committee also studied a proposal relating to replacing the requirement that all boating accidents involving damage to property in excess of \$100 be reported to the Game and Fish Department with a requirement that the commissioner could establish by rule the minimum property damage for which a report is required. Representatives of the Game and Fish Department testified that almost any type of accident involving a boat results in over \$100 in damage to the boat or property and thus the Game and Fish Department receives a large number of unnecessary reports.

Enforcement of Game and Fish Laws and Rules

The committee studied a proposal to prohibit the spotting of bighorn sheep, moose, or elk from aircraft. Representatives of the Game and Fish Department supported the proposal. Under one alternative considered by the committee, it would be a disputable presumption that a person hunting or guiding another person for the purpose of hunting bighorn sheep, moose, or elk within 24 hours of flying on an aircraft, not on a regularly scheduled commercial flight, unlawfully spotted or located the game from the aircraft. The committee also reviewed the statutes of Colorado, Idaho, Montana, Oregon, Utah, British Columbia, Alberta, the Yukon, and the Northwest Territories that deal with the use of aircraft in taking big game animals.

The committee studied a proposal concerning implied consent to chemical testing for purposes of determining intoxication while being afield with a gun or other firearm or bow and arrow and a proposal presented by the Game and Fish Commissioner concerning implied consent to chemical testing for purposes of determining intoxication while operating a motorboat or vessel. The proposals were closely modeled on the implied consent to chemical testing for purposes of determining alcoholic and drug content of the blood for persons operating motor vehicles. Representatives of the Game and Fish Department said the department has experienced problems with intoxicated hunters and has received a great deal of input from hunters who support the concept of implied consent to chemical testing for purposes of determining intoxication while going afield with a gun or other firearm or bow and arrow. Representatives of the enforcement division of the Game and Fish Department informed the committee that there is a low conviction rate for prosecuting intoxicated hunters because there is no implied consent requirement for hunting while intoxicated under present law. Representatives of the North Dakota Furtakers Association also voiced support for the proposal.

Concerning the proposal relating to implied consent to chemical testing for purposes of determining intoxication while operating a motorboat or vessel, the committee received testimony from the North Dakota Sportfishing Congress that the proposal is not needed in light of the fact that between 1984 and 1988 there were only five boating-related accidents involving alcohol. Representatives of the Game and Fish Department said the department does not have the authority to require any type of testing for intoxication and thus it is difficult to know how many boating accidents between 1984 and 1988 actually involved alcohol. This proposal was supported by representatives of the Game and Fish Department.

The committee studied a proposal presented by the Game and Fish Commissioner to allow the hours for hunting game birds and protected animals to be set by proclamation. Under the proposal, the Governor, acting with the advice of the Game and Fish Commissioner, could set hunting hours by proclamation.

The committee studied a proposal presented by the Game and Fish Commissioner to clarify that individuals born after December 31, 1961, must satisfactorily complete a hunter safety education course before they may purchase or obtain a hunting license. This proposal also contained a suggestion that persons should be prohibited from purchasing or obtaining a license to hunt bighorn sheep, moose, or elk until they have successfully completed a hunter safety education course. Representatives of the Game and Fish Department informed the committee that it is unclear under current law whether the person issuing the license or the person obtaining the license is in violation of the statute requiring that an applicant born after December 31, 1961, have completed a hunter safety education course before being eligible to obtain a hunting license.

The committee studied a proposal presented by the Game and Fish Commissioner to require that hunters, while hunting big game, wear a head cover-

ing and an outer garment above the waistline, both of daylight fluorescent orange color, totaling 400 square inches of solid fluorescent orange color. Representatives of the Game and Fish Department informed the committee that many hunters use camouflage orange clothing, which is less effective for visibility when hunting.

The committee considered a proposal presented by the Game and Fish Commissioner to include mountain lions and black bears under the definition of fur-bearers. The commissioner indicated that the change in the definition of fur-bearer would allow the Governor to establish a season on these species and then close the season which, in effect, would protect these species. Representatives of the North Dakota Fur-Takers Association testified that landowners or tenants should be able to take depredating mountain lions and black bears if they notify and obtain the approval of the commissioner before catching or killing the mountain lion or black bear. In addition, the committee received testimony from representatives of the North Dakota Fur-Takers Association that the landowner or tenant or that person's agent should be entitled to possess any depredating mountain lion or black bear killed by them.

The committee studied a proposal presented by the Game and Fish Commissioner to expand the coverage of the state's endangered species law to include any species determined by the commissioner to be threatened or endangered as opposed to only resident species determined to be threatened or endangered. Representatives of the Game and Fish Department indicated that this revision would afford better protection to rare and endangered animals in the state.

The committee studied a proposal to allow the Governor to prohibit the hunting, taking, harvesting, collecting, distributing, commercializing, or transporting of any species of wildlife determined by the Governor to be threatened or endangered or any threatened or endangered plant by proclamation. Under the proposal, a person who sells any plant or wildlife species protected by such a proclamation is guilty of a Class C felony.

The committee studied a proposal to make it a Class C felony for any person to catch, take, kill, or destroy any fish, fish parts, or fish eggs of any fish species determined by the commissioner to be of special concern. Representatives of the Game and Fish Department testified that the department has experienced serious problems in trying to protect paddlefish and pallid sturgeon in the Missouri River system in North Dakota. The proposal was supported by the Game and Fish Department.

The committee studied a proposal to repeal NDCC Section 20.1-04-09, which concerns guns lawfully usable in pursuing or taking game birds. Representatives of the Game and Fish Department indicated the department has experienced problems with individuals using .22 caliber long rifles to hunt wild turkeys. Using .22 caliber rifles results in many birds being crippled and due to the low muzzle velocity of .22 caliber rifles ricocheting may occur and result in safety concerns. Under the proposal, the Governor's proclamation concerning the taking of game birds

would specify which guns could lawfully be used in pursuing or taking game birds.

Administration

The committee studied a proposal presented by the Game and Fish Commissioner to provide that if an individual applies for a license issued by lottery when by any law or proclamation that person is ineligible to apply because of any waiting period, the license fee is forfeited to the Game and Fish Department and deposited in the state game and fish fund. The committee received information from representatives of the Game and Fish Department that as more licenses are issued by lottery, with associated waiting periods, the problem of people applying prior to the time they are eligible to apply is increasing. The department incurs substantial administrative costs in dealing with the early applications.

The committee studied a proposal to establish a game and fish commission. Under the proposal, the Game and Fish Commission would consist of the Governor or the Governor's designee, the Commissioner of Agriculture or the Commissioner of Agriculture's designee, one member from each of four game and fish commission districts, and one member at large. Game and fish commission district members and the at-large member would be appointed by the Governor from a list submitted to the Governor by the state's sportsmen's organizations. In order to be eligible to submit a nominee, the organization would have to be incorporated in the state and its articles of incorporation must state that its purposes encompass wildlife conservation, hunting, fishing, trapping, and the shooting sports. The Game and Fish Commissioner would be appointed by the commission. The committee received testimony from members of the Cass County Wildlife Club that the present system of managing the Game and Fish Department is too politicized. Members of the Cass County Wildlife Club advocated that the commission proposal would take politics out of the process of appointing the Game and Fish Commissioner. Also, representatives of the club said a commission would increase public input into decisions made by the Game and Fish Department.

The committee studied a proposal to revise the Game and Fish Advisory Board to eliminate the eight districts and allow the Governor to appoint a farmer or rancher member from a list of three names submitted by agricultural organizations requested by the Governor to submit nominees and to appoint a non-farmer or nonrancher member from a list of three names submitted by outdoor, sportsmen, wildlife, and conservation organizations requested by the Governor to submit a list of nominees. Proponents of the proposal indicated that representation of agricultural organizations and outdoor, sportsmen, wildlife, and conservation organizations on the game and fish advisory board would be increased.

The committee studied a proposal presented by the Game and Fish Commissioner to reduce the number of public meetings that each member of the Game and Fish Advisory Board must hold in that member's district from two each fiscal year to one each fiscal year. Representatives of the Game and Fish Department informed the committee that attendance at

Game and Fish Advisory Board meetings is low and that it is expensive to hold the meetings because department personnel must attend the meetings. It was estimated that the department could save between \$8,000 and \$10,000 per year by requiring that each board member hold a public meeting at least once each fiscal year instead of twice each fiscal year as required under present law. However, the committee also received testimony that the advisory board should hold as many meetings as practicable each year.

The committee studied a proposal presented by the Game and Fish Commissioner to change the name of the commissioner of the Game and Fish Department to the director of the Game and Fish Department. Alaska and North Dakota are the only noncommission states that identify their professional game and fish enforcement officer as commissioner instead of director. This results in confusion nationwide as well as internationally and the commissioner indicated that the change in the name from the commissioner of the Game and Fish Department to the director of the Game and Fish Department would end this confusion.

Orders and Proclamations of the Governor

The committee studied a proposal presented by the Game and Fish Commissioner to allow the Governor to determine the time period for which a recipient of an antelope license obtained by lottery is ineligible to again apply rather than rely on the statutorily established five-year period. Representatives of the Game and Fish Department testified that because of the five-year statutory waiting period not all available antelope permits are issued in some areas of the state. They indicated that this has resulted in an overpopulation of antelope in some areas of the state.

The committee studied a proposal presented by the Game and Fish Commissioner to repeal the requirement that gubernatorial game and fish proclamations be published in the official newspaper of each county affected by the proclamation. Publication of the proclamation costs the department approximately \$150,000 per biennium. Sportsmen canvassed by the department indicated that the proclamations published in newspapers are not read by the sporting public and that sportsmen rely on guides published by the department for information regarding proclamations which they obtain at the time they purchase their licenses. Representatives of the North Dakota Newspaper Association indicated that publication of the game and fish proclamations makes the proclamations available to almost every adult person in North Dakota, not only to those who might be on the department's mailing list or who might purchase licenses. In addition, publication of this information disseminates it to the people of North Dakota before they purchase their licenses so they can review the proclamations and determine what, when, or where they want to hunt or fish. According to a survey conducted by University of North Dakota's Bureau of Governmental Affairs more than 75 percent of the people in the state read public notices. Finally, newspapers are essentially small businesses and the loss of revenue from the publication of proclamations would be a severe economic blow to them.

Private Shooting Preserves

The committee studied a proposal presented by the Game and Fish Commissioner to repeal NDCC Chapter 20.1-12, which concerns the regulation of private shooting preserves and to allow the commissioner to regulate private shooting preserves by adopting rules relating to operating permits, fees, bond requirements, and the operation of preserves. Representatives of the Game and Fish Department said this would provide the commissioner more flexibility in meeting the needs of shooting preserve operators and their clientele.

Payments in Lieu of Taxes

Committee members expressed the view that counties affected by federal land acquisitions are entitled to receive the full benefit of the Wildlife Refuge Revenue Sharing Act and the Payments in Lieu of Taxes Act of 1976 to ameliorate the effects of the loss to the tax base resulting from federal fee land acquisitions. Concerning this issue, the chairman of the Legislative Council authorized the committee to send letters to the Secretary of the Senate of the United States, Clerk of the House of Representatives of the United States, Chairman of the Senate Appropriations Committee, Chairman of the House of Representatives Appropriations Committee, Secretary of the Interior, President of the United States, and each member of the North Dakota Congressional Delegation urging the Congress of the United States to appropriate money sufficient to pay 100 percent of the payments in lieu of taxes under the Wildlife Refuge Revenue Sharing Act and the Payments in Lieu of Taxes Act of 1976.

Recommendations

The committee recommends House Bill No. 1034 to provide that a person who is convicted of a Class B misdemeanor for trespassing would be guilty of a Class A misdemeanor for the second or subsequent offense within a two-year period. If the person is convicted of hunting on posted land or trapping on private land without the permission of the owner then that person's hunting, fishing, and trapping privileges would be suspended for a period of one year for the first conviction, two years for the second conviction, and three years for the third or subsequent conviction.

The committee recommends House Bill No. 1035 to enable the Game and Fish Commissioner to establish a combination game and fish license. The license would consist of a general game license, resident fishing license, resident small game license, habitat stamp, and fur-bearer license or any other combination of existing game and fish licenses as determined by the commissioner. The commissioner would establish the fee for the combination license by rule. However, the fee for the combination license could not be greater than the aggregate cost of the individual licenses comprising the combination license but could be less than the aggregate cost of the individual licenses included in the combination license.

The committee recommends House Bill No. 1036 to allow guides and outfitters to purchase a license to enable them to provide residents or nonresidents, for compensation, big game guiding and outfitting ser-

vices and one antlered white-tailed deer license or one male antelope license, or both. The Game and Fish Commissioner would make 25 antlered white-tailed deer licenses and 10 male antelope licenses available to guides and outfitters each year. A guide or outfitter would not be able to purchase more than five antlered white-tailed deer licenses and two male antelope licenses in any one year. If the guide or outfitter is successful in obtaining a license, that person would be required to purchase a Class 2 annual license to guide for a fee of \$500. The fee for each antlered white-tailed deer license would be \$500 and the fee for each male antelope license would be \$1,000. Guides or outfitters could provide residents or nonresidents, for compensation, big game guiding and outfitting services and one antlered white-tailed deer license or one male antelope license, or both. The guide or outfitter would have to accompany persons provided licenses while those persons are hunting.

The committee recommends House Bill No. 1037 to enable the Game and Fish Commissioner to establish a combination license consisting of a nonresident big game bow license and a nonresident wild turkey bow permit. The fee for the combination license would be established by the commissioner by rule but could not be greater than the aggregate cost of the individual licenses comprising the combination license.

The committee recommends Senate Bill No. 2036 to establish resident commercial clam, nonresident commercial clam, and resident clam licenses. The fee for the resident commercial clam license would be \$100, for the nonresident commercial clam license \$500, and for the resident clam license \$10. The authority of the Governor would also be extended to establish seasons for the taking of all forms of wildlife as opposed to only big game, small game, fish, or fur-bearers as is provided under present law.

The committee recommends House Bill No. 1038 to require that individuals seeking to obtain gratis landowner hunting licenses be either a person who leases land for agricultural purposes and who actively farms or ranches that land or a landowner in order to obtain a gratis landowner hunting license.

The committee recommends House Bill No. 1039 to require a certificate of title for every motorboat. The certificate of title would be issued through the Game and Fish Department as opposed to the Registrar of Motor Vehicles. The fee for the certificate of title would be \$5. The certificate of title requirement would become effective on January 1, 1993.

The committee recommends House Bill No. 1040 to require the State Treasurer to transfer annually from the highway tax distribution fund, before allocation of the fund, to the game and fish fund an amount equal to the tax collected on 70 gallons of motor fuel multiplied by the number of motorboats registered pursuant to NDCC Section 20.1-03-12. The Game and Fish Department would be required to expend these moneys on constructing, reconstructing, repairing, and maintaining boating facilities.

The committee recommends Senate Bill No. 2037 to require the Game and Fish Commissioner to establish by rule the minimum property damage for which a collision, accident, casualty, or liability report would have to be filed with the commissioner.

The committee recommends House Bill No. 1041 to prohibit the spotting or ascertaining of the location of bighorn sheep, moose, or elk from aircraft for the purpose of hunting or taking or for the purpose of guiding another person in the hunting or taking of that game.

The committee recommends Senate Bill No. 2038 to establish implied consent to chemical testing for purposes of determining intoxication while being afield with a gun or other firearm or bow and arrow. Any person who is afield with a gun or other firearm or bow and arrow would be deemed to have given consent to a chemical test of the blood, breath, saliva, or urine for the purpose of determining the alcoholic, other drug, or combination thereof, content of the blood. A person's hunting privileges could be revoked or denied for up to four years for being afield with a gun or other firearm or bow and arrow while intoxicated.

The committee recommends Senate Bill No. 2039 to establish implied consent to chemical testing for purposes of determining intoxication while operating a motorboat or vessel. Any person who operates a motorboat or vessel in this state would be deemed to have given consent to a chemical test of the blood, breath, saliva, or urine for the purpose of determining the alcoholic, other drug, or combination thereof, content of the blood. A person could be prohibited from operating a motorboat or vessel for up to three years for operating a motorboat or vessel while intoxicated.

The committee recommends Senate Bill No. 2040 to repeal Section 20.1-01-10 of the North Dakota Century Code, relating to the hours for hunting game birds and protected animals. The Governor could set by proclamation the hours for hunting game birds and protected animals.

The committee recommends Senate Bill No. 2041 to require that no person born after December 31, 1961, could purchase or obtain a hunting license unless that person has satisfactorily completed a hunter safety education course.

The committee recommends Senate Bill No. 2042 to require hunters to wear a head covering and an outer garment above the waistline, both of daylight fluorescent orange color, totaling 400 square inches of solid fluorescent orange color, while hunting big game.

The committee recommends Senate Bill No. 2043 to include mountain lions and black bears within the definition of fur-bearers. Landowners or tenants or their agents would be allowed to catch or kill depredating mountain lions or black bears upon notice to and approval of the Game and Fish Commissioner.

The committee recommends Senate Bill No. 2044 to expand the coverage of the states' endangered species law to include any species determined by the Game and Fish Commissioner to be threatened or endangered.

The committee recommends Senate Bill No. 2045 to make it a Class C felony for anyone to hunt, take, harvest, collect, distribute, commercialize in, or transport any species of wildlife or plant determined by the Governor to be threatened or endangered.

The committee recommends Senate Bill No. 2046 to make it a Class C felony for any person to catch, take, kill, or destroy any fish, fish parts, or fish eggs of any fish species determined by the Game and Fish Commissioner to be of special concern.

The committee recommends Senate Bill No. 2047 to enable the Governor to specify by proclamation which guns may lawfully be used in pursuing or taking game birds.

The committee recommends Senate Bill No. 2048 to provide that the license fee of any person who applies for a license issued by lottery when by law or proclamation that person is ineligible to apply because of any waiting period is forfeited to the Game and Fish Department. The fee would be deposited in the state game and fish fund.

The committee recommends Senate Bill No. 2049 to reduce the number of meetings that each member of the Game and Fish Advisory Board must hold in that member's district from two each fiscal year to one each fiscal year.

The committee recommends Senate Bill No. 2050 to change the name of the commissioner of the Game

and Fish Department to the director of the Game and Fish Department.

The committee recommends Senate Bill No. 2051 to enable the Governor to determine by proclamation the time period for which a recipient of an antelope license obtained by lottery is ineligible to again apply for an antelope license.

The committee recommends Senate Bill No. 2052 to repeal NDCC Chapter 20.1-12, concerning the regulation of private shooting preserves, and to allow the Game and Fish Commissioner to regulate private shooting preserves by adopting rules relating to operating permits, fees, bond requirements, and the operation of private shooting preserves.

The committee recommends House Concurrent Resolution No. 3003 to amend Section 11 of Article X of the Constitution of North Dakota to provide that revenue from gasoline and motor fuel excise taxes derived from gasoline and fuel used in vessels and recreational vehicles not licensed for use on public highways must be used for constructing, reconstructing, repairing, and maintaining public facilities related to vessels and recreational vehicles not licensed for use on public highways.

GARRISON DIVERSION OVERVIEW COMMITTEE

The Garrison Diversion Overview Committee originally was a special committee created in 1977 by House Concurrent Resolution No. 3032 and recreated in 1979 by Senate Concurrent Resolution No. 4005. In 1981 the 47th Legislative Assembly enacted North Dakota Century Code Section 54-35-02.7, which statutorily creates the Garrison Diversion Overview Committee. The committee is responsible for legislative overview of the Garrison Diversion Unit Project and related matters and for any necessary discussions with adjacent states on water-related topics.

Section 54-35-02.7 directs that the committee consist of the majority and minority leaders and their assistants from the House and Senate, the Speaker of the House, the President Pro Tempore of the Senate selected at the end of the immediately preceding legislative session, the chairmen of the House and Senate standing Committees on Natural Resources, and the chairmen of the House and Senate standing Committees on Agriculture.

Committee members were Representatives Scott B. Stofferahn (Chairman), Ronald A. Anderson, Richard Kloubec, William E. Kretschmar, Eugene J. Nicholas, Alice Olson, and John Schneider and Senators William S. Heigaard, Adam Krauter, Rick Maixner, Walter A. Meyer, John M. Olson, Harvey D. Tallackson, and Art Todd.

The report of the committee was submitted to the Legislative Council at the biennial meeting of the Council in November 1990. After amendment, the report was adopted for submission to the 52nd Legislative Assembly.

HISTORY OF THE PROJECT

The Garrison Diversion Unit is one of the principal developments of the Pick-Sloan Missouri River Basin program, a multipurpose program authorized by the federal Flood Control Act of 1944 (Pub. L. 78-534; 57 Stat. 887). The Pick-Sloan plan provided for construction of a series of dams on the Missouri River to control flooding, provide power generation, and maintain a dependable water supply for irrigation, municipalities, industry, recreation, wildlife habitat, and navigation. Approximately 550,000 acres of land in North Dakota were inundated by reservoirs on the Missouri River under the Pick-Sloan plan.

One feature of the Pick-Sloan plan was the Missouri-Souris Unit, which was the forerunner of the Garrison Diversion Unit. Under the plan for the Missouri-Souris Unit, water was to be diverted below the Fort Peck Dam in Montana and transported by canal for irrigating 1,275,000 acres; supplying municipalities in North Dakota, South Dakota, and Minnesota; restoring Devils Lake; conserving wildlife; and augmenting the Red River. The building of Garrison Dam changed the diversion point of the Missouri-Souris Unit from Fort Peck Dam to Garrison Reservoir (Lake Sakakawea). After considerable study and review of the Missouri-Souris Unit, Congress reauthorized the project as the initial stage,

Garrison Diversion Unit, in August 1965 (Pub. L. 89-108; 83 Stat. 852).

The first detailed investigations of the Garrison Diversion Unit were completed in 1957 and involved a proposed development of 1,007,000 acres. The initial stage of the Garrison Diversion Unit, authorized in 1965, provided for irrigation service to 250,000 acres in North Dakota. This plan involved the construction of major supply works to transfer water from the Missouri River to the Souris, James, and Sheyenne rivers, and the Devils Lake Basin. The plan also anticipated water service to 14 cities, provided for several recreation areas, and provided for a 146,530-acre wildlife plan to mitigate wildlife habitat losses resulting from project construction and enhancement of other wetland and waterfowl production areas.

Under the 1965 authorization the Snake Creek Pumping Plant would lift Missouri River water from Lake Sakakawea into Lake Audubon, an impoundment adjacent to Lake Sakakawea. From Lake Audubon the water would flow by gravity through the 73.6-mile McClusky Canal into Lonetree Reservoir, situated on the headwaters of the Sheyenne River. The Lonetree Reservoir would be created by construction of Lonetree Dam on the upper Sheyenne River, Wintering Dam on the headwaters of the Wintering River, and the James River dikes on the headwaters of the James River. Lonetree Reservoir is situated so that water can be diverted by gravity into the Souris, Red, and James River basins and the Devils Lake Basin.

The Velva Canal would convey project water from the Lonetree Reservoir to irrigate two areas totaling approximately 116,000 acres. The New Rockford Canal would convey project water for irrigation of approximately 21,000 acres near New Rockford and to deliver water into the James River feeder canal for use in the Oakes-LaMoure area. The Warwick Canal, an extension of the New Rockford Canal, would provide water for irrigation in the Warwick McVile area and provide water for the restoration of the Devils Lake chain.

The United States Bureau of Reclamation has overall responsibility for operation and maintenance of the Garrison Diversion Unit and will operate and maintain all project works during the initial period following completion of construction.

A number of concerns have halted construction on the project in recent years, including:

1. Canadian concerns that the Garrison Diversion Project would allow transfer of foreign species of fish and other biota to the detriment of Canadian waters in violation of the Boundary Waters Treaty of 1909.
2. Numerous problems concerning wildlife mitigation and enhancement lands.
3. Legal suits brought by groups, such as the National Audubon Society, seeking to halt construction of the Garrison Diversion Unit by claiming that the project violates the National Environmental Policy Act and to enforce a

stipulation between the United States and Audubon to suspend construction until Congress reauthorizes the Garrison Diversion Unit.

Canadian Concerns

Canadian interest in the Garrison Diversion Unit has centered on concerns that because the Garrison Diversion Unit involves a transfer of water from the Missouri River to the drainage basins of the Souris and Red rivers, the return flows entering Canada through the Souris and Red rivers would cause problems with regard to water quality and quantity.

In 1973 the Canadian government requested a moratorium on all further construction of the Garrison Diversion Unit until a mutually acceptable solution for the protection of the Canadian interests, under the Boundary Waters Treaty of 1909, was achieved. The United States government responded by stating its recognition of its obligation under the Boundary Waters Treaty and adopting a policy that no construction affecting Canada would be undertaken until it was clear that this obligation would be met.

During 1974 several bi-national meetings of officials were held to discuss and clarify the Canadian concerns over potential degradation of water quality. An agreement was reached in 1975 between the governments of Canada and the United States to refer to the International Joint Commission the matter of potential pollution of boundary waters by the Garrison Diversion Unit.

The International Joint Commission created the International Garrison Diversion Study Board. The board concluded that the Garrison Diversion Unit would have adverse impacts on water uses in Canada including adverse effects on flooding and water quality. The board specifically recommended that any direct transfer by the Garrison Diversion Unit of fish, fish eggs, fish larvae, and fish parasites be eliminated by adopting a closed system concept and the installation and use of a fish screen structure.

In August 1984 representatives of Canada and the United States announced a general agreement between the two governments that Phase I of the initial stage of the Garrison Diversion Unit could be constructed. Canada, however, remained firmly opposed to the construction of any features that could affect waters flowing into Canada.

Garrison Diversion Unit Commission

The water and energy appropriations bill, signed by the President on July 16, 1984, contained an agreement to establish a commission to review the Garrison Diversion Unit.

The Secretary of the Interior appointed a 12-member Garrison Diversion Unit Commission to review the Garrison Diversion Unit in North Dakota. The commission was directed to examine, review, evaluate, and make recommendations regarding the existing water needs of North Dakota and to propose modifications to the Garrison Diversion Unit before December 31, 1984. Construction on the project was suspended from October 1 through December 31, 1984.

The commission worked under the restriction that any recommendation of the commission must be ap-

proved by at least eight of the 12 members and that should the commission fail to make recommendations as required by law, the Secretary of the Interior was authorized to proceed with construction of the Garrison Diversion Unit as designed.

Congress directed the commission to consider 11 specific areas:

1. The costs and benefits to North Dakota as a result of the Pick-Sloan Missouri Basin program.
2. The possibility for North Dakota to use Missouri River water.
3. The need to construct additional facilities to use Missouri River water.
4. Municipal and industrial water needs and the possibility for development, including quality of water and related problems.
5. The possibility of recharging ground water systems for cities and industries, as well as for irrigation.
6. The current North Dakota water plan to see if parts of the plan should be recommended for federal funding.
7. Whether the Garrison Diversion Unit can be redesigned and reformulated.
8. The institutional and tax equity issues as they relate to the authorized project and alternative proposals.
9. The financial and economic impacts of the Garrison Diversion Unit, when compared with alternative proposals for irrigation and municipal and industrial water supply.
10. The environmental impacts of water development alternatives, compared with those of the Garrison Diversion Unit.
11. The international impacts of the water development alternatives, compared with those of the Garrison Diversion Unit.

The commission released its final report and recommendations on December 20, 1984. The commission affirmed the existence of a federal obligation to the state of North Dakota for its contribution to the Pick-Sloan Missouri Basin program but recommended that an alternative plan be implemented in place of the 250,000-acre initial stage of the Garrison Diversion Unit as authorized in 1965 and the original project authorization in 1944. The commission recommended that Lonetree Dam not be completed at this time and that the Sykeston Canal be constructed as the functional replacement. The commission specifically said, while the Lonetree Dam and Reservoir should remain an authorized feature of the plan, the construction should be deferred pending a determination by the Secretary of the Interior consisting of a demonstration of satisfactory conclusion of consultations with Canada and after appropriation of funds by Congress. The commission recommended that the Garrison Diversion Unit be configured to provide irrigation service to 130,940 acres in the Missouri and James River basins instead of the initial stage 250,000-acre project. The commission also recommended that the first phase of the Glover Reservoir be included as a feature of the plan in lieu of Taayer Reservoir for regulation of flows in the James River.

The commission further recommended the establishment of a municipal, rural, and industrial system for treatment and delivery of quality water to approximately 130 communities in North Dakota. A municipal and industrial water treatment plant with a capacity of 130 cubic feet per second was recommended to provide filtration and disinfection of water releases to the Sheyenne River for use in the Fargo and Grand Forks areas.

An alternate state plan for municipal water development was submitted to the Garrison Diversion Unit Commission by then Governor Olson and Governor-elect Sinner, proposing that the state would design and construct the water systems and pay 25 percent of their costs. In return, the federal government would provide up to \$200 million in non-reimbursable funds for municipal water development projects. The federal government would pay 75 percent of the construction costs of the systems with only the operation and maintenance costs borne by the benefiting cities.

Authorization Legislation

Following the issuance of the commission's final report, Congress enacted the Garrison Diversion Unit Reformulation Act of 1986, Public Law 99-294, 100 Stat. 433. This legislation was approved by representatives of the state of North Dakota, the Garrison Diversion Conservancy District, the National Audubon Society, and the National Wildlife Federation.

The legislation addressed the James River by directing a comprehensive study of effects over the next two years during which time construction of the James River Feeder Canal, the Sykeston Canal, and any James River improvements could not be undertaken. Of the 32,000-acre New Rockford Extension, included in the Garrison Diversion Unit Commission final report, 4,000 acres were transferred to the West Oakes area and 28,000 acres were authorized for development within the Missouri River Basin.

The legislation also provided for:

1. 130,940 acres of irrigation.
2. Deauthorization of the 1944 Flood Control Act and the 1965 Garrison authorization.
3. Preservation of North Dakota's water rights claims to the Missouri River.
4. Nonreimbursement of features constructed prior to enactment which will no longer be employed to full capacity, to the extent of the unused capacity.
5. Acre-for-acre mitigation based on ecological equivalency rather than the 1982 mitigation plan.
6. Deauthorization of the Taayer Reservoir and purchase of the Kraft Slough for waterfowl habitat.
7. Continued authorization, but no construction, of the Lonetree Reservoir. The Sykeston Canal was mandated for construction following required engineering, operational, biological, and economic studies. The Lonetree Reservoir could be built if:
 - a. The Secretary of the Interior determines a need for the dam and reservoir.

- b. Consultations with Canada are satisfactorily completed.
 - c. The Secretaries of State and the Interior certify determinations to Congress and 90 days have elapsed.
8. No construction of irrigation acreage other than on the Indian reservations or the 5,000-acre Oakes Test Area until after September 30, 1990.
 9. A \$200 million grant for construction of municipal and industrial water delivery systems. A \$40.5 million nonreimbursable water treatment facility to deliver 100 cubic feet per second to Fargo and Grand Forks was authorized. All water entering the Hudson Bay drainage must be treated and must comply with the Boundary Waters Treaty of 1909.
 10. Municipal and industrial water delivery systems for the Fort Berthold, Fort Totten, and Standing Rock Reservations.
 11. Irrigation soil surveys that must include investigations for toxic or hazardous elements.
 12. Federal participation in a wetlands trust to preserve, enhance, restore, and manage wetland habitat in North Dakota.

Garrison Municipal, Rural, and Industrial Water Supply Program

Included within the Garrison Diversion Reformulation Act of 1986 is an authorization enabling Congress to appropriate \$200 million for the Garrison Municipal, Rural, and Industrial Water Supply Program. These funds are to be utilized for the planning and construction of water supply facilities for municipal, rural, and industrial use throughout the state of North Dakota.

On July 18, 1986, the Garrison Diversion Conservancy District and the North Dakota State Water Commission entered an agreement for the joint exercise of governmental powers. This agreement allows the district to use the expertise of the commission in developing and implementing the water supply program. In addition, the district is to enter into a cooperative agreement with the Secretary of the Interior and the district is the fiscal agent for the state concerning money received and payments made to the United States for the water supply program.

On November 19, 1986, the United States and the Garrison Diversion Conservancy District entered into an agreement that designates the district to act on behalf of the state of North Dakota in the planning and construction, as well as the operation and maintenance, of the water systems constructed pursuant to the Garrison Diversion Reformulation Act of 1986. This agreement contains a definition of the responsibilities of the United States and the district under the agreement, provisions concerning the work to be undertaken by the district, stipulations concerning the transfer of funds, and the procedure for reporting, accounting, and reviewing the planning and construction programs. The agreement also provides that the Southwest Pipeline Project is eligible to receive funding under this program.

Another important aspect of the water supply program is that in order to be eligible for financial assistance for construction of a water supply project

under the program, applications must be submitted by a local governmental entity and must be supported by a preliminary report and followed by a feasibility report. The preliminary report is to contain the following information:

1. Name of project sponsor.
2. Purpose and description of the project together with a map showing the project area.
3. Potential user interest.
4. Source of water supply.
5. Preliminary plan for the project with alternative plans where appropriate.
6. Preliminary cost estimate for both capital costs and operation, maintenance, and replacement costs.
7. Repayment concepts including user costs and project financing plans.

Following approval of the preliminary report by the State Water Commission, a feasibility report must be submitted before the project can be approved for funding. This report is to contain the following information:

1. Purpose and description of the project together with a map showing the project area and proposed facilities.
2. Source of water supply.
3. Project plans with alternative plans where appropriate.
4. Description of water treatment and storage facilities proposed.
5. Design criteria including population projections and water demands.
6. Interest survey of potential water users.
7. Environmental assessment.
8. Discussion of permit requirements and responsibilities.
9. Cost estimates for capital and operation, maintenance, and replacement costs.
10. Cost of water to users.
11. Financial plan for the project.

Once these steps have been satisfactorily completed, the project sponsors may then seek financial assistance to proceed with the design and commence construction of the project.

LEGAL ISSUES

On May 9, 1990, South Dakota, North Dakota, and Montana filed suit against the United States Corps of Engineers to enjoin the corps from discharging a greater volume of water from the Oahe Reservoir than that flowing into the reservoir, with the intent that the existing pool levels be maintained, until June 2, 1990. The plaintiffs claimed that the lowering of the water level would expose the spawning area of various classes of sportfish as well as other fish species essential to the food chain and thus prevent the annual spawn. The United States District Court for the District of North Dakota in South Dakota v. Hazen, No. A1-90-097 (May 9, 1990), issued an injunction enjoining the corps from releasing water from Lake Oahe Reservoir into the Missouri River at a rate greater than that at which water is flowing into the reservoir. On appeal, the United States Court of Appeals for the Eighth Circuit in South Dakota v.

Hazen, 914 F.2d 147 (8th Cir. 1990), determined that the issue was moot, and remanded the case to the district court with instructions that its injunction be vacated and the case dismissed.

Throughout the interim, legal counsel for the Garrison Diversion Conservancy District informed the committee on the progress of the litigation surrounding the project.

In 1971 the Garrison Diversion Conservancy District conveyed the lakebed of Devils Lake to the United States as a partial payment for certain non-federal costs of the Garrison Diversion Unit. The conveyance was based upon the premise that the state had title to the lakebed up to the surveyed meander line around Devils Lake. The state conveyed 62,370 acres (of a total 83,046 acres below the meander line) and was given a monetary credit of \$3,637,750. However, the North Dakota Supreme Court in In the Matter of the Ownership of the Bed of Devils Lake, 423 N.W.2d 141 (N.D. 1988), and the United States Court of Appeals in 101 Ranch v. United States, 905 F.2d 180 (8th Cir. 1990), ruled that the boundary between the public lakebed and the private upland is ambulatory (i.e., fluctuates with the elevation of the lake), so questions have been raised about the value of the state's conveyance of lakebed.

Meanwhile, the Devils Lake Sioux Tribe initiated a quiet title action concerning the entire lakebed. The tribe contends that the United States owns the lakebed in trust for the tribe and that North Dakota never acquired the lakebed at the time of statehood. The defendants successfully moved to dismiss the lawsuit in the United States District Court, primarily because it appeared that the tribe had been compensated for the taking of the lakebed in a 1977 Indian Claims Commission settlement, but the United States Court of Appeals for the Eighth Circuit recently remanded the case to the district court for a trial on the merits (the remand is not yet final because the United States petitioned for a rehearing by the court of appeals).

This case has significant implications for the state of North Dakota, the city of Devils Lake, and all riparian landowners around Devils Lake. The tribe claims, among other things, that the bed of Devils Lake "is all lands up to and including the ordinary high water mark at the time of the Treaty of February 19, 1867, 15 Stat. 505, which plaintiff currently believes to be an elevation of approximately 1,439 feet MSL." This elevation is several feet higher than the approximate elevation of the surveyed meander line around Devils Lake. Accordingly, if the Devils Lake Sioux Tribe prevails in the quiet title action, many landowners (including landowners within the city of Devils Lake) could be divested of their title to the "riparian" land.

Management of the lakebed was transferred from the Garrison Diversion Conservancy District to the State Engineer in 1989. Therefore, the Attorney General will determine, in November, which agency (and which attorneys) will be primarily responsible for defending the state's interests in the continuing litigation.

PROJECT UPDATE

Throughout the interim, the committee received updates concerning the Garrison Diversion Unit Project from the manager of the Garrison Diversion Conservancy District. The principal issues and problems affecting the Garrison Diversion Unit can be divided into six different areas.

Appropriations

The United States Office of Management and Budget recommended a zero budget for the Garrison Diversion Unit Project for fiscal year 1991. Through efforts on the part of the North Dakota Congressional Delegation, the Governor, and district legislative and local officials and citizens, the Congress passed a \$35 million budget for the project. Although the amount may be reduced by a percentage of five percent to 10 percent because of underfinancing of Bureau of Reclamation projects by Congress, it is anticipated there will be funds for the completion of the New Rockford Canal; advancement of the recreation program at Devils Lake State Park; wetland mitigation and enhancement and protection of project features affecting wildlife refuges; the municipal, rural, and industrial water grant program; an inlet/outlet study for Devils Lake; and continued planning for the development of the Turtle Lake irrigation area.

Mid-Dakota Reservoir

The advantages of the Mid-Dakota Reservoir over the proposed Sykeston Canal are summarized as follows:

1. The Mid-Dakota Reservoir has a construction cost of approximately \$35 million versus \$109 million for the Sykeston Canal.
2. The operating costs of the Mid-Dakota Reservoir will be about \$100,000 annually compared to \$700,000 for the Sykeston Canal. (The difference, to be paid by North Dakota users, is about \$60 million over the life of the project).
3. The Mid-Dakota Reservoir will not have any problems with winter operations to stabilize Devils Lake and provide water to Fargo, Grand Forks, and the Red River Valley area.
4. The Mid-Dakota Reservoir will provide a 30-day reserve supply of water in case of a McClusky Canal or Snake Creek pumping plant failure.
5. The Mid-Dakota Reservoir will have less impact on wildlife refuges and will provide water to better serve their needs.
6. The development of managed wetlands in the upper portion of the old Lonetree Reservoir site can provide the finest wildlife refuge in the state.
7. Options such as power generation may well improve the economic advantages of the Mid-Dakota Reservoir even further.

Inspector General's Report

The Inspector General, Department of the Interior, proposed a reallocation of costs of the project to the various project beneficiaries. Basically, the Inspector General disagreed with the Bureau of Reclamation wherein a portion of the project that is already built

to a scale necessary for the larger 250,000-acre irrigation requirement be made nonreimbursable. In addition, the portions of the project that were not built were allocated costs based upon lost economies of scale. As a result, the overbuilt facilities or the cost of facilities that were chargeable because of the lost economies of scale would, under bureau recommendation, be borne by the federal government as a nonreimbursable cost, or in the alternative reimbursed from power revenues. In addition, the federal government would be responsible for ongoing operation and maintenance in proportion to the unused facilities that were maintained. The Inspector General reallocated all of these costs not on the basis of proportional capacity of the facilities, but rather upon the basis of technical incremental cost accounting rules.

The Bureau of Reclamation is making an indepth study of the reallocation of these costs, but the report is not yet available. Concurrently, the conservancy district had a study prepared by Professor Leitch of North Dakota State University with the assistance of personnel of the Game and Fish Department and the United States Fish and Wildlife Service in an attempt to value the benefits for wetlands, wildlife, and recreation that resulted from the project. These benefits were found to be \$637 million over the life of the project (based upon a 50-year project life) after these benefits were discounted at eight percent to 1990 dollars. It is the conservancy district's position that these benefits should also be allocated a portion of the cost of construction and operation of the project, and should continue to be borne by the federal government. Following the completion of the reallocation of costs by the bureau, any remaining costs that are in excess of that intended by the district and Congress would be subject to negotiations with the Secretary of the Interior with the thought that the Secretary might well disregard that portion of the Inspector General's report. If this should fail, it may be necessary to return to Congress to obtain clarification, or in the alternative for the state to make a long-term commitment over the next 10 to 20 years to be certain that these costs can be paid during the early years of the project when the cash flow resulting from the sale of water may be less.

Rate of Progress

The rate of progress of the Garrison Diversion Unit Project since it was first authorized in 1944 and construction was begun in 1965 has been unsatisfactory. Based upon Bureau of Reclamation estimates, costs to complete the project total almost one billion dollars. While these estimated costs are somewhat high a major portion of the project remains to be built. All possible ways to increase the progress in the construction of the project need to be explored, including the provision of increased federal appropriations and even the possibility of district or state participation in construction costs or activities. This would be especially true in the case of Canadian approval of the Mid-Dakota Reservoir as a project feature.

Assumption of Operation and Maintenance Activities by the Conservancy District

Upon completion of the project, the conservancy district should assume the responsibility for the project's operation. This would include the full operation and maintenance of the project, sale of water, billings, and the payment of ongoing current expenses. In an effort to begin developing the capability of the conservancy district to assume these responsibilities, negotiations are underway with the Bureau of Reclamation for the conservancy district to assume the responsibility for the operation and maintenance of facilities that have been constructed to date. Under a contract with the bureau, the conservancy district would be reimbursed for its costs. A program would be jointly developed for the operation and maintenance on both a one-year and five-year basis, but the Bureau of Reclamation would retain veto power over the activities because they would be providing the funds. Because facilities such as the McClusky Canal have deteriorated to the point where they no longer can be operated at their intended capacity, it would be the hope of the conservancy district that it not only could maintain the project at such a level that further deterioration would be prevented, but that it could also begin the process of restoring the features to their intended capacity. In view of personnel restrictions upon the Bureau of Reclamation imposed by recent appropriations, this is probably a necessary step if the project is to be adequately maintained.

Increased State and District Activities in Regard to the Project

The Vision 2000 Committee of the Greater North Dakota Association as well as other business, municipal, county, and citizen groups have all made recommendations during the past year that the state and the conservancy district assume greater responsibility and a higher level of activity in promoting and moving the Garrison Diversion Unit Project forward. Acceptance of the responsibility for operation and maintenance is a first step in that direction. In addition, the board plans increased activities in planning and engineering in order to permit the development of features that might be accelerated in construction by the bureau or brought to Congress directly by the conservancy district in the event the bureau should fail to move the project forward at the desired pace. To further this activity, the board increased its 1991 mill levy from .8 of one mill to one mill, which will increase income by \$125,000 per year.

Also consistent with this philosophy was the activity of the conservancy district in joining with the State Water Commission, State Department of Health and Consolidated Laboratories, and State Game and Fish Department in a study of methods of stabilizing Devils Lake with water from the Garrison Diversion Unit Project. As a result of the study, a pipeline, estimated to cost approximately \$53 million, was recommended to transport water that had been treated at the project treatment plant from the New Rockford Canal to Devils Lake.

The indepth study of the Mid-Dakota Reservoir-Sykeston Canal issue may result in a finding by the American-Canadian Consultative Group that the

Mid-Dakota Reservoir can satisfactorily protect Canada from biota transfer from the Missouri River Basin to the Hudson Bay drainage area. If this should occur, every effort should be made to accelerate construction of the Mid-Dakota Reservoir in order to provide water to the Fargo and Grand Forks areas in the event of the continuation of the drought, and to provide water for the stabilization of Devils Lake. Included in the exploration should be the possibility of the state or district participating in the construction of Mid-Dakota Reservoir if that would move this feature forward. The estimated \$60 million in operational savings over the life of the project would more than return the moneys invested.

OTHER PROJECT FEATURES AND WATER-RELATED ISSUES

Throughout the interim the committee received updates concerning other aspects of the Garrison Diversion Unit Project and water-related issues from representatives of the State Water Commission and the United States Bureau of Reclamation.

The State Water Commission has received inquiries from 115 North Dakota communities concerning water improvement projects. To date, 10 projects, serving 55,000 people, have been completed and four are in the final design stage. The remaining projects are in reconnaissance or feasibility studies. Since the Garrison municipal, rural, and industrial water supply program was inaugurated in 1986, approximately \$37 million in federal funds has been obligated or expended for various water projects. The State Water Commission has identified seven projects that would be ready to receive funding in fiscal year 1991. These projects include the Grandin municipal water supply system, Langdon rural water system, McLean-Sheridan rural water system, North Valley rural water system, Agassiz's rural water system, Ramsey County rural water system, and Missouri West River water supply system. Garrison municipal, rural, and industrial water supply program funds will also be used for the Southwest Pipeline Project.

Concerning the Southwest Pipeline Project, representatives of the State Water Commission estimated that the pipeline will begin supplying water to Dickinson in 1991. The pipeline itself has been completed, and the State Water Commission is constructing two pumping plants—one at Dodge and one at Richardton. The Southwest Pipeline Project users have formed the Southwest Water Authority to eventually take over the operation and maintenance of the Southwest Pipeline Project. Nineteen communities have agreed to receive water from the pipeline and the Southwest Water Authority is soliciting additional water users for the pipeline.

The State Water Commission and the Garrison Diversion Conservancy District have undertaken a study of the feasibility of supplying water to eight counties in the northwest area of the state. This study is known as the Northwest Area Water Supply Study Project. Under the project the water needs of the Fort Berthold Indian Reservation would be incorporated with the nonreservation water needs of the eight northwestern counties. The water would supply the Fort Berthold Indian Reservation as well as 75 com-

munities in northwestern North Dakota. The total cost of this project is \$180 million, with \$60 million allocated to Indian water use and \$120 million allocated for non-Indian use. Representatives of the State Water Commission said the project features related to Indian water needs may be eligible for federal funding.

Representatives of the Bureau of Reclamation reported that, to date, the bureau has expended \$9.7 million on the Indian municipal, rural, and industrial water supply feature of the reformulated Garrison Diversion Unit Project, with \$5.5 million being spent in 1990. Construction on three water projects, one on each of the reservations affected by the project, is scheduled to begin in 1991. At present, the Bureau of Reclamation is at 142 percent of concurrency for mitigating the environmental impacts of the Garrison Diversion Unit Project.

In January 1990 Neil Stessman, Project Manager, Missouri-Souris Projects Office, Bureau of Reclamation, was named assistant regional director for the bureau.

Richard E. Brohl was named the new project manager in April 1990.

This Statement of the President was added by amendment by the Legislative Council at its November meeting and is printed here pursuant to Rule 5 of the Supplementary Rules of Operation and Procedure of the Legislative Council:

STATEMENT BY THE PRESIDENT

Today I signed H.R. 5019, the Energy and Water Development Appropriations Act, 1991. I am concerned about the reduced funding provided for the Superconducting Super Collider and basic research programs. These reductions are especially unfortunate because they were used to finance large numbers of economically unjustified water projects in the Corps of Engineers and the Bureau of Reclamation.

I do recognize that the Congress kept the funding contained in this Act at a level consistent with the Budget Summit Agreement. It is my hope that one of the features of the caps in the agreement is that it will force a competition for limited funds based on merit. I will be asking the Congress in future budgets for funding based on national priorities rather than narrow interests.

In this regard, I am deeply concerned that the Congress has chosen to reduce programs in scientific research while protecting \$170 million of funds earmarked by the Congress for special interest projects. Nowhere is our responsibility to apply Federal funds to our highest national priorities more crucial than in the area of scientific research. Research projects should be selected after competitive evaluation on the basis of merit and research priorities not on the basis of parochial interest.

Sound public works projects form an important part of our Nation's infrastructure. They should be funded in a manner that minimizes total project costs

and fulfills our commitments to nonfederal cost-sharing partners for orderly project development. A number of the Act's provisions and projects relating to the Army Corps of Engineers depart from this principle and concern me deeply.

- First, many of the dollars are for low-priority projects that are not in the national interest.
- Second, this Act provides Federal funding for work that in the past has been the responsibility of the local sponsor or property owner.
- Third, I am concerned that this Act initiates work that the Corps may not be able to finish due to the budget constraints agreed to by this Administration and the Congress for FY 1992 and beyond. I am, therefore, advising the Congress that continued funding of many of these projects may not be accommodated in future budgets.

It is clear that the Congress intends to continue funding construction on some elements of the Garrison Diversion project. However, as recognized by the House, the irrigation features remain a major concern. A task force under the auspices of the Secretary of the Interior has been reviewing possible alternatives. The task force recommendations reinforce administration policy to not support Federal funding for the completion of irrigation facilities or related principal water supply works. The Administration will consider funding for other features of the project, consistent with budgetary constraints.

Sections 506 and 510 of the Act also raise serious concerns. Section 506 of the Act provides that none of the funds appropriated by H.R. 5019 or any other legislation may be used to conduct studies concerning the possibility of changing from the currently required at cost to a market rate or any other noncost-based method for the pricing of hydroelectric power by Federal power authorities. Article II, section 3 of the Constitution grants the President authority to recommend to the Congress any legislative measures considered "necessary and expedient." Accordingly, in keeping with the well-settled obligation to construe ambiguous statutory provisions to avoid constitutional questions, I will interpret section 506 so as not to infringe on the Executive's authority to conduct studies that might assist in the evaluation and preparation of such measures.

Section 510 of the Act prohibits the use of appropriated funds to change certain employment levels determined by the Administrators of the Federal Power Marketing Administrations. This provision must be interpreted in light of my constitutional responsibility, as head of the unitary executive branch, to supervise my subordinates. I note in this regard that section 510 does not purport to interfere with my authority, insofar as the Administrators of the Federal Power Marketing Administrations are subject to my direction and control, to direct them to establish and maintain certain employment levels. Rather, it only circumscribes the ability of other executive branch officials to alter such levels once they have been set in a manner satisfactory to me.

/s/ **GEORGE BUSH**

THE WHITE HOUSE

November 5, 1990

HIGHER EDUCATION SYSTEM REVIEW COMMITTEE

House Bill No. 1618, approved by the 1989 Legislative Assembly, created a special committee consisting of the House and Senate majority and minority leaders and their assistant leaders, the Speaker of the House, and the Governor to meet with the Board of Higher Education to discuss ideas and issues the committee members believe are priorities regarding the future of the system of higher education in North Dakota. The bill provided that the board is to present to the committee, on or before February 1 of each even-numbered year, a seven-year comprehensive plan for the system of higher education in North Dakota. The plan must contain the rationale the board used in determining its priorities and methods the board intends to use to address the issues identified. In addition, the board is to report to the Legislative Assembly at the organizational session on how the funds proposed in the budget for the upcoming biennium will be used to implement the seven-year plan.

Committee members were Senators William S. Heigaard (Chairman), Rick Maixner, John M. Olson, and Art Todd; Representatives Ronald A. Anderson, Richard Kloubec, William E. Kretschmar, John Schneider, and Scott B. Stofferahn; and Governor George A. Sinner.

The report of the committee was submitted to the Legislative Council at the biennial meeting of the Council in November 1990. The report was adopted for submission to the 52nd Legislative Assembly.

Committee Action

The committee reviewed the constitutional provisions relating to the powers of the Legislative Assembly and the Board of Higher Education as summarized below:

1. The Legislative Assembly is to provide adequate funds for the operations of the institutions referred to in the constitution. The level of funding that is considered "adequate funds" is determined by the Legislative Assembly.
2. The secretary to the Board of Higher Education is to reside in the city of Bismarck.
3. The State Board of Higher Education is required to appoint a State Commissioner of Higher Education whose principal office is at the State Capitol in Bismarck. The commissioner is the chief executive officer of the State Board of Higher Education and is to perform duties as the board prescribes.
4. The State Board of Higher Education has full authority over the institutions under its control with the right to prescribe, limit, or modify the courses offered at the institutions. In addition, the Board of Higher Education has the authority to organize or reorganize, within constitutional and statutory limitations, the work of each institution under its control.
5. The heads of each state institution included in the constitution must submit budget requests for the biennial appropriations for each institution to the Board of Higher Education. The

Board of Higher Education is required to consider the budgets and has the authority to revise each budget in the best interest of the educational system in North Dakota.

6. The Board of Higher Education has control of the expenditure of funds belonging to each institution and also those appropriated by the Legislative Assembly. However, the funds appropriated by the Legislative Assembly and specifically designated for one or more institution may not be used at another institution.

The Higher Education System Review Committee held three meetings with the Board of Higher Education during the 1989-91 biennium. The final draft of the seven-year plan was presented to the committee on June 19, 1990. The plan was developed based on the Total Quality Improvement management system, which is a management system used by industry to improve quality. The Total Quality Improvement system provides that campus personnel be involved in defining standards of quality directly related to their duties and responsibilities, in the measurement and observation of the standards, and in the development of plans to achieve goals and desired outcomes.

The Board of Higher Education conducted hearings at each of the institutions to give faculty, administrators, staff, students, and the public an opportunity to comment on the problems and goals of the North Dakota higher education system. The comments made were then considered by the board in the development of the seven-year plan.

The committee reviewed preliminary drafts of the seven-year plan in earlier meetings with the board. Based on the preliminary information, the committee stressed the following points which the board considered in developing the final draft of the plan:

1. The plan needs to identify specific problems and include specific objectives, goals, and results.
2. The plan needs to be developed under the premise that students are the number one priority.
3. Cooperation among colleges is important for the future of North Dakota higher education.
4. The plan should consider a higher education funding reduction alternative.
5. The size of a higher education system that the North Dakota tax base will support needs to be considered in the plan.
6. The plan should address the Board of Higher Education's long-term goal relating to agreements with other states and provinces including tuition agreements.

In discussions with the board regarding the seven-year plan, the committee raised the following issues:

1. The North Dakota higher education system could benefit from an improved image.
2. Program duplication exists among institutions.
3. Higher education institutions are viewed by communities as economic development opportunities, not educational institutions.

4. Students are not prepared for college level courses.
5. Faculty members are underutilized for economic development.
6. Faculty and technology are underutilized.
7. High quality faculty is important for classroom instruction.
8. Additional financial support is needed for students.

Presented below is a summary of the final draft of the higher education seven-year plan. The seven-year plan includes goals classified as quality, system, partnership, and budget.

1. **Quality** - This goal involves setting and achieving constantly improving standards of service that meet the needs of students, citizens, economic enterprises, and colleagues in education, as appropriate for each operating unit and level of the system.
2. **System** - The North Dakota University System, including all state-supported postsecondary institutions, will function as an integrated and diversified network of instructional, research, and public services.
3. **Partnership** - This goal involves integrating the efforts and programs of the North Dakota University System with those of other educational and economic systems and with the needs of the public as defined by the public.
4. **Budget** - This goal involves a plan for the coordination of resources and expenditures. The budget goals are intended to create resources that will be adequate for the ambitious goals listed above without undue stress on any of the participants. The budget goals emphasize maximum feasible financial effort from the institutions and the state.

Many of the seven-year plan's goals express a vision of the future but not how the goals will be achieved. The intent of the current planning process is to develop a shared vision of North Dakota higher education. Once the vision is established it will serve the following purposes:

1. To motivate all involved to invest their enthusiasm and energies toward achieving it.
2. It will be the basis for developing specific objectives and action plans for the short term (through 1993).
3. It will become the starting point for the plan developed next biennium for 1999.

The short-term action plan for 1990-91 includes:

1. Conduct baseline research on current condition of goals.
2. Identify major gaps between goals and reality.
3. Develop 1991-93 action plans.
4. Focus campus missions.
5. Establish an economic advisory committee.
6. Establish a one-university system with a chancellor.
7. Develop a budget process for quality and cooperation.
8. Conduct seminars on total quality improvement management methods.

For more detailed information regarding the seven-year plan, please refer to the Board of Higher Education's "North Dakota University System Partners for Progress Plan for 1990-1997" dated June 1990.

Based on the seven-year plan the Board of Higher Education adopted the following changes:

1. Establish a one-university system with a chancellor.
2. Phase out the professional student exchange program.
3. Budget for a higher level of student financial aid.
4. Recommend that all higher education institutions adopt the semester calendar by the 1992 academic year.
5. Establish minimum high school graduation requirements for admission to the University of North Dakota, North Dakota State University, Minot State University, and Valley City State University.
6. Develop focused missions for Mayville State University, Dickinson State University, and Valley City State University.

The Board of Higher Education began implementation of the one-university system headed by a chancellor by naming Dr. John Richardson as chancellor and naming the 11 higher education institutions and the Board of Higher Education office the North Dakota University System. Under the chancellor system, the institution presidents are no longer directly responsible to the Board of Higher Education but to the chancellor and the chancellor is directly responsible to the Board of Higher Education. The Council of University Presidents was discontinued and the presidents are now a cabinet of the chancellor; however, the board still delegates full authority to the institution presidents to administer their individual campuses.

The chancellor will set the direction for the North Dakota University System and coordinate state policy regarding programs that affect the entire higher education system such as telecommunications and economic development initiatives.

The committee considered amending the following constitutional and statutory provisions in order to implement fully the higher education one-university system headed by a chancellor.

1. Eliminate constitutional provisions that:
 - a. Designate the missions of the higher education institutions.
 - b. Make reference to the "Commissioner of Higher Education."
 - c. Call for the heads of the institutions to submit budget requests to the Board of Higher Education.
 - d. Restrict funds appropriated by the Legislative Assembly for one higher education institution from being used at another higher education institution.
2. Eliminate statutory provisions that:
 - a. Refer to the title "Commissioner of Higher Education."
 - b. Require certain courses to be taught at one or more of the higher education institutions.

- c. Designate responsibilities for specific institutions.
- d. Designate responsibilities for staff at higher education institutions.

Committee Recommendations

Although the Board of Higher Education has already implemented certain changes, including the one-university system with the chancellor position, the committee, in order to remove constitutional barriers relating to the full implementation of the seven-year plan, recommends the following resolutions for constitutional amendment:

1. House Concurrent Resolution No. 3004 proposes a constitutional amendment to be voted on at the 1992 general election removing the names, locations, and missions of the institutions of higher education from the constitution.
2. House Concurrent Resolution No. 3005 proposes a constitutional amendment to be voted on at the 1992 general election to remove the provision restricting the transfer of funds between higher education institutions and to

remove references to the Commissioner of Higher Education which would be replaced with a chief executive officer position (the Board of Higher Education could call the chief executive officer position by another name, such as chancellor).

Committee Considerations

Although some statutes may conflict with the one-university system with a chancellor, the committee chose not to recommend statutory changes prior to a vote of the people on the recommended constitutional changes.

Because of the budget reductions as a result of the December 5, 1989, tax referrals, the committee considered a bill draft to allow the Board of Higher Education to proceed with only some of the capital construction projects approved by the 1989 Legislative Assembly and to extend the effective date of authorization from June 30, 1991, to June 30, 1993. However, the Board of Higher Education proceeded with all of the construction projects during the 1989-91 biennium.

INDUSTRY AND BUSINESS COMMITTEE

The Industry and Business Committee was assigned two studies. House Concurrent Resolution No. 3059 directed a study of the health care insurance needs of uninsured and underinsured persons. House Concurrent Resolution No. 3073 directed a study of establishing a controlled substances reporting center for the reporting of prescribed controlled substances.

Committee members were Senators Jim Maxson (Chairman), Joe Keller, Tim Mathern, and Art Todd and Representatives John Dorso, Moine R. Gates, Dan Gerhardt, Rosemarie Myrdal, Diane Ness, Kit Scherber, Don Shide, Al Soukup, and Joe Whalen. Senator R. V. Shea was also a member of the committee until his death in March 1990.

The report of the committee was submitted to the Legislative Council at the biennial meeting of the Council in November 1990. The report was adopted for submission to the 52nd Legislative Assembly.

HEALTH CARE INSURANCE STUDY

Background

The health care insurance study was to include a review of the legislative approaches considered by other states and methods of meeting health care insurance needs of the uninsured and underinsured in North Dakota through alternatives including cooperative efforts involving health care providers, third-party payors, employers, and state and local governments. The initial problem posed for the committee was how to identify adequately and precisely those who comprise the uninsured and underinsured population in North Dakota. The status of these individuals, e.g., whether the majority are employed or unemployed, would have a bearing on which programs should be devised to address health care insurance needs and how precisely those programs would be targeted. Recent studies indicate that approximately 70 percent of the uninsured are in fact employed or are family members of an employed individual. Many of these individuals have been identified or categorized as the "working poor." Programs implemented to provide insurance coverage for those who are employed have included such elements as employer and employee subsidies for the purchase of insurance coverage, the imposition of a tax or mandatory contribution on employers to fund insurance programs administered by the state, or tax credits for employers who provide insurance coverage for employees. One commentator has recently observed that there appear to be three broad strategies for improving access to health insurance for those who are uninsured or underinsured. One approach entails marginal improvements in coverage while another endorses universal insurance coverage. A middle approach between those two seemingly opposed approaches involves restructuring the insurance system to provide coverage where it does not currently exist and using service strategies to "fill the gaps." One previous interim study, utilizing information gathered in an attempt to identify the uninsured and underinsured, addressed the health care insurance

needs of a segment of the population that does not have access to insurance coverage.

House Concurrent Resolution No. 3077 (1987) directed a study of the differences in employee benefits between part-time and full-time employment in the private sector. While studying this issue, the interim Budget Committee on Government Administration focused on the number of North Dakotans without health insurance or access to health services. A survey of 510 individuals conducted by the Bureau of Governmental Affairs for the Maternal Health Division of the Department of Health and Consolidated Laboratories revealed that approximately 10.6 percent of North Dakota's population is not insured. Through the survey, that committee learned that there is a direct relationship between the number of hours an individual works per week and whether the individual is provided health insurance coverage, i.e., the more hours an individual works per week, the more likely that the employer will sponsor the employee's health plan. That committee also considered statistical data provided by the Health Resources Section of the State Department of Health and Consolidated Laboratories which largely confirmed the initial survey results regarding the number of North Dakotans without some form of health insurance. The statistics indicated that the vast majority of North Dakotans, approximately 88 percent, had some form of health insurance coverage. The sources of this coverage included public assistance programs, such as aid to families with dependent children and Medicaid; private health insurance, including North Dakota Blue Cross Blue Shield and health maintenance organizations; Medicare; and self-insured private businesses. The statistics revealed that approximately 12 percent of North Dakota's population, or roughly 79,535 individuals, was estimated to be either uninsured, underinsured, or without access to health services. Based on this information, that committee recommended 1989 House Bill No. 1036, which would have required an employer to allow part-time employees access to the employer's health insurance group. The bill would not have required that the employer pay for the coverage. The bill passed the House and passed the Senate after amendment. However, the House refused to concur in the Senate amendments and a conference committee was appointed. Following adoption of the conference committee report, the bill was defeated in the House.

State Law and Access to Health Care Insurance and Services

Medical Assistance

North Dakota Century Code (NDCC) Chapter 50-24.1 establishes the state's medical assistance program for needy persons. The program pays for a wide range of needed medical services from licensed medical providers for children and caretakers receiving aid to families with dependent children or supplemental security income. The program is also available to persons who meet the technical

eligibility requirements of aid to families with dependent children or supplemental security income but have sufficient income to meet their basic living needs though not their medical assistance is available to individuals described in the state plan for medical assistance as "categorically needy" or "medically needy." According to statistics submitted to the 1987-88 interim Budget Committee on Government Administration, approximately 33,000 North Dakotans receive health services coverage through public assistance programs, such as aid to families with dependent children and Medicaid.

Comprehensive Health Association of North Dakota

The Comprehensive Health Association was created by the 1981 Legislative Assembly as a pool of insurance companies to provide health insurance coverage to persons who cannot receive coverage elsewhere. The association's participating membership consists of those insurers doing business in North Dakota with an annual premium volume of accident and health insurance contracts amounting to at least \$100,000 for the previous calendar year. All insurance companies must maintain membership in the association as a condition for writing accident and health insurance policies in North Dakota. To be eligible for enrollment, a person has to have been rejected for accident and health insurance by one company, or coverage restrictions or preexisting conditions limitations are required by one company. The person also has to have been a resident of the state for at least six months. The Comprehensive Health Association plan premium charged eligible persons is limited to 135 percent of the average premium rates charged by the five largest insurance companies in the state. The benefits provided through the plan include deductible options of \$500 and \$1,000.

Selected State and Federal Enactments or Proposals

Hawaii

In 1974 Hawaii passed the Prepaid Health Care Act, which requires employers to offer health insurance to employees who have completed at least four consecutive weeks of work, who work a minimum of 20 hours a week, and whose monthly wage is at least 86.67 times the minimum hourly wage. Significant features of the Act include:

1. Employers must pay at least one-half the cost of the health insurance premium. Employees are only obligated to contribute 1.5 percent of their monthly gross earnings toward the cost of the premium. If 50 percent of the premium is greater than 1.5 percent of the employee's gross wages, the employer must contribute the remainder of the premium. Employers are not required to offer health insurance to employees who are government employees, seasonal farm workers, or workers in family-only businesses.
2. An employee may waive all of the required health care benefits required under the Act under certain circumstances. An employee may consent to pay a greater share of the employee's wages and to a withholding of that share by the employer for the purpose of providing prepaid

health care benefits for the employee's dependents.

3. A premium supplementation fund subsidizes an employer with fewer than eight employees. Such an employer is entitled to premium supplementation if the employer's share of the cost of providing health insurance coverage exceeds 1.5 percent of the total wages payable to the employees and if the amount of the excess is greater than five percent of the employer's income before taxes directly attributable to the business in which the employees are employed.
4. An employer who fails to provide required coverage is liable for the health care costs incurred by an eligible employee during the period in which the employer failed to provide coverage. Additionally, employers who fail to comply with the Act are subject to sanctions including monetary penalties and injunctions barring the operation of the employer's business during the period of noncompliance.
5. The benefits under the Act consist of most hospital inpatient services, physician visits, surgical and emergency hospital outpatient care, and diagnostic services.

The Prepaid Health Care Act was challenged on the basis that it was preempted by the federal Employee Retirement Income Security Act. Following a court determination that the Act was preempted by federal law, Hawaii obtained a congressional exemption from the preemptive provisions of the federal Act.

Massachusetts

Massachusetts recently enacted an Act commonly referred to as the Universal Health Care Act. The purpose of the Act is to provide a program of insurance coverage for health care services for persons in Massachusetts who are not eligible for or covered by a health insurance plan, self-insurance health plan, medical assistance program, or any other plan or program that provides for payment by a third party for health care services. Significant features of the Act include:

1. The Department of Medical Security is to provide a program of health insurance coverage which ensures that all residents of Massachusetts have access to basic health insurance or managed care at a reasonable cost by March 1, 1991. The department is to set up programs to help small businesses to purchase health insurance for their employees at rates equivalent to those paid by large businesses. The department also is to establish a pool to buy insurance for employees of businesses with six or fewer full-time equivalent employees and establish a health insurance hardship program to assist small businesses for which the medical security contribution required under the Act exceeds five percent of gross revenue.
2. Each Massachusetts employer with more than five employees is required to pay an unemployment health insurance contribution equal to .12 percent of the first \$14,000 of wages paid all employees, and a medical security contribution

equal to 12 percent of the first \$14,000 of wages paid to employees who have worked for that employer for at least 90 days, who work at least 30 hours per week (or 20 hours if a head of household or an employee of six months or more), who are employed for a period of at least five months, and who are not covered by Medicare, Medicaid, or health insurance paid for by someone other than the employer. The employer is not required to contribute for employees who are seasonable agricultural workers. The employer is allowed to deduct from the medical security contribution the amount of its average expense per employee for health insurance or other health care benefits provided by the employer to the employees. The required contributions are phased in gradually with regard to new employers—no contribution is required until after the first 12 consecutive months as an employer and the contribution is one-third the usual rate in the first year of applicability, two-thirds the usual rate in the second year, and the full rate in the third year of the employer's existence. A penalty of \$35 per day or five dollars per employee per day, whichever is greater, is imposed on any employer who fails to make the required health insurance contributions and restitutions for such unpaid contributions is required.

3. A partial credit against personal income tax is provided to a small business in each of the first two years it pays at least 50 percent of the health insurance premiums for its full-time employees. The credit amounts to 20 percent of its premium expenditure in the first year, and 10 percent in the second. This partial credit is also extended to the corporate excise tax owned by small business.
4. Every public and independent institution of higher education in the state is required to ensure that all full-time and three-quarter-time students are covered by health insurance that satisfies minimum requirements established by the department. Noncomplying institutions are subject to fines equal to \$5 per day per student.

The Act allows employers already offering insurance coverage to employees to deduct the cost of that insurance from the required contributions. By not directly requiring employers to offer health insurance, it appears that Massachusetts may have averted confrontation with the preemptive provisions of the Employee Retirement Income Security Act, which exempts self-insurers from state regulation.

Washington

The Washington Basic Health Plan was created in 1987 to ensure that working individuals and others who lacked health insurance coverage are provided with necessary basic health services in an appropriate setting. The office of the Washington Basic Health Plan administers the program, selects a benefits package, designs a sliding fee scale, determines cost savings mechanisms, and negotiates with providers who wish to participate in the program. To be eligible for the plan, an individual must be under 65 years of age and have a gross family income that

is at or below 200 percent of the federal poverty level. Coinsurance premiums are required based upon gross family income but are decreased for lower income individuals. Those families below the poverty level pay approximately 10 to 15 percent of the cost of providing the benefits and those enrollees at or above 200 percent of poverty level pay the full cost. The state subsidized portion of the premium is funded from state general funds rather than a payroll tax or dedicated increase in professional service taxes. There is a 30,000 cap on the number of individuals who can receive subsidies and the law is to be reviewed in 1992.

Proposed Federal Legislation

S.768, introduced by Senator Edward Kennedy of Massachusetts in the 100th Congress, would establish the "Basic Health Benefits for All American Act." The Act is intended to ensure that all Americans have access to at least a minimum package of health insurance benefits. Significant features of the bill include:

1. Each employer that is subject to minimum wage regulations would have to enroll all employees who work more than 17.5 hours a week, and their families, in a minimum health insurance plan.
2. Employees could not waive participation in the health plan for themselves or their families. There is one exception, however. In the case of two-worker couples, one worker could waive coverage for the spouse and children provided proof is given that the other spouse or parent has coverage. A less-than-full-time employee could also waive enrollment in the health insurance plan. If such an employee waived enrollment, the employer would be required to make a payment to the state or other entity providing health benefits equal to the minimum amount the employer would have paid toward the health care costs of the employee if the employee had not waived the enrollment.
3. The "minimum benefit package" would include inpatient and outpatient hospital care and doctor services, diagnostic and screening tests, and prenatal and well-baby care, which would be defined annually by the Secretary of Health and Human Services.
4. The insurance plan could not exclude or limit coverage for any worker or family because of any current or prior disease, disorder, or condition.
5. The insurance plan could not require a deductible greater than \$250 per individual or \$500 per family, nor could the benefit plan require payment of any copayment or coinsurance in an amount that exceeds 20 percent of the cost of the health care received. "Out-of-pocket" expenses for the insured would be limited to \$3,000 in the first calendar year that begins more than one year after the Act becomes effective. For a subsequent calendar year, the out-of-pocket limit would be the limit provided in the previous calendar year increased by the percentage increase in the consumer price index for all urban

consumers for the 12-month period ending on September 30 of the preceding calendar year.

6. The employer would have to pay at least 80 percent of the premiums for worker and family coverage. In the case of a "low wage" worker, the employer would have to pay 100 percent of the worker and family premiums. Employers with less than 25 employees who do not have a health benefit plan by the effective date of the Act, or have a plan but have changed insurers or plans, would have to purchase insurance through regional insurers established under the Act.

Employee Retirement Income Security Act

The Employee Retirement Income Security Act of 1974 comprehensively regulates employee pension and welfare benefit plans. An employee welfare benefit plan is defined as a plan that provides to employees "medical, surgical, or hospital care or benefits, or benefits in the event of sickness, accident, disability [or] death," whether these benefits are provided "through the purchase of insurance or otherwise." The Act imposes upon pension plans a variety of substantive requirements relating to participation, funding, and vesting. The Act also establishes various uniform procedural standards relating to reporting, disclosure, and fiduciary responsibility for both pension and welfare plans.

The Act contains three provisions that defines the scope of federal preemption. The Act supersedes "any and all State laws insofar as they may now or hereafter relate to any employee benefit plan." While this is a broad preemption of state laws that relate to employee-benefit plans, that preemption is substantially qualified by what has been called the "insurance savings clause," which broadly states that, with one exception, nothing in the Act may be construed "to exempt or relieve any person from any law of any State which regulates insurance, banking, or securities." The one specified exception to the insurance saving clause is the so-called "deemer clause," which states that no employee benefit plan, with certain exceptions, may "be deemed to be an insurance company or other insurer, bank, trust company, or investment company, or to be engaged in the business of insurance or banking for purposes of any law of any State purporting to regulate insurance companies, insurance contracts, banks, trust companies, or investment companies." The deemer clause has come into play in some cases to distinguish insured and uninsured plans in the context of the issue of whether the Act preempts state mandated-benefit statutes as applied to the uninsured plans. Courts have determined that this clause prohibits a state from regulating a self-insured employee benefit plan as if it were an insurance company.

Thus, state mandated-benefit statutes may not be preempted by the Act with respect to insured employee benefit plans. However, state insurance regulations may be preempted by the Act when applied to self-funded or uninsured plans.

Testimony and Committee Considerations

Testimony received by the committee underscored the importance of adequately defining what exactly it means to be "uninsured" or "underinsured." While

all those offering testimony agreed that there is a growing concern regarding the plight of uninsured and underinsured, and that third-party payors and all of those who do carry insurance pay a part of the rising cost of providing health care to those who are either uninsured or underinsured, it was also agreed that adopting any approach to the problem without clearly defining the population to be addressed would ultimately frustrate attempts to meet the needs of the uninsured and underinsured.

Health Insurance Coverage Survey Results

The committee, in an effort to gain a better understanding of the identity of the uninsured and underinsured in North Dakota, reviewed the findings of the 1989 Survey of Health Insurance Coverage in North Dakota. The survey was commissioned by the Department of Health and Consolidated Laboratories and conducted by the Bureau of Governmental Affairs at the University of North Dakota. The survey was intended to amplify and expand upon information obtained in a similar survey conducted in 1988.

Testimony received by the committee regarding the survey results indicated approximately 8.8 percent of North Dakotans are without health care insurance coverage, while the previously conducted survey indicated approximately 10.6 percent of North Dakotans were without such coverage. Testimony indicated the difference in percentages was not statistically significant since it is within the accepted three percent error range. Generally, the survey results indicated that over twice as many of those who were identified as uninsured were between the ages of 18 and 29 and nearly one-fifth of the uninsured work at unskilled jobs. While two-thirds of the uninsured are employed, 27 percent of those categorized as uninsured work part time. Over two-thirds of the uninsured have household incomes of less than \$20,000 per year, and over 80 percent of the uninsured have a high school education or less. The survey results indicated nearly 15 percent of the uninsured used hospital emergency rooms and the most frequent method of payment was on a time-pay basis. Over 15 percent of those who used emergency rooms and over 12 percent of those hospitalized could not pay for the services. For hospitals, these figures fall within the "uncompensated" care category and enter the cost-shift equation. Additional testimony indicated that approximately one to two percent of the bill of a paying health care service consumer is attributable to the cost of providing health care services for the uninsured and for which payment is not received, i.e., the "cost-shift."

Testimony regarding the survey results also indicated that the availability of health care insurance seems to govern how often people seek health care services. For example, the uninsured seem to delay prevention and maintenance health care treatment and use physician services very little but use emergency room and hospital services quite often. The Commissioner of Insurance emphasized that the health survey results indicate that cost is the single, overriding reason why people are either dropping or not obtaining health care insurance. It was noted that there has been an alarming escalation of health care

costs in the country as a whole and in North Dakota particularly. For example, in 1980 health care costs accounted for approximately 9.1 percent of the gross national product, while in 1988 the costs accounted for approximately 11.3 percent. In 1980 a family policy cost \$100 per month; in 1985 it had increased to \$205 per month; in 1988 it had increased to \$250 per month; and in 1989 a family policy cost \$285 per month. Testimony indicated that the uninsured or underinsured are at least three times more likely not to seek medical care when they should because of cost considerations. It was noted, paradoxically, that these same individuals when they do seek medical services, seek emergency room attention which is much more expensive and results in higher uncompensated costs for the health care provider.

Conclusions garnered from the health insurance survey results, testimony regarding those results, and otherwise general testimony regarding the needs of the uninsured and underinsured indicated that, absent systemic changes in the health care delivery system, efforts to address the needs of the uninsured and underinsured must target a well-defined population and must be sensitive to the economic environment within which the efforts are implemented. Testimony indicated that a review of actions taken or considered in other states revealed that one or both of two primary methods have been considered or undertaken in an effort to address problems associated with the uninsured and underinsured: require employers to offer health insurance coverage for employees or raise eligibility criteria for state medical assistance programs. Testimony indicated that employer mandates appear unwise because of the relative fragility of the economy and budget constraints often foreclose consideration of efforts to raise medical assistance eligibility criteria. Testimony indicated, nevertheless, that access to or the availability of adequate health insurance coverage and ensuring the affordability of that coverage must be the touchstones of any concerted effort to address the needs of the uninsured and underinsured.

Bill Drafts Considered

In the course of considering how best to address the needs of the uninsured and underinsured, the committee reviewed several bill drafts addressing the issues of access, availability, and affordability of health insurance coverage. These bill drafts included a proposal, patterned after House Bill No. 1036 (1989), which would have required an employer to allow part-time employees access to the employer's health insurance group; a proposal that would allow health insurers to offer a basic health insurance coverage free of certain legislatively mandated coverages; a proposal that would require any legislation mandating certain health insurance coverages to be reviewed by the Commissioner of Insurance before the legislation could be introduced or considered; a proposal to expand medical assistance eligibility in the state; and a proposal that would have allowed the Department of Human Services to contract with private insurers to provide a subsidized nongroup health insurance program.

Part-time Employee Access

The committee considered a bill draft patterned after House Bill No. 1036 (1989), which would have required an employer to allow part-time employees access to the employer's health insurance group. Testimony indicated the bill draft would address the issue of access to adequate health insurance coverage for a segment of the population which has been identified as being, more often than not, uninsured or underinsured. However, testimony indicated that adoption of this kind of legislation may be counterproductive. For example, even though the employer would not be required to pay for the health coverage, it was noted that dissension may arise in the workplace if a part-time employee is required to pay for health insurance benefits while a full-time employee is not. Additional testimony suggested that insurance industry experience indicates that part-time employees tend to use health insurance more often than full-time employees and consequently increase the cost of providing the coverage; although, other testimony indicated that this concern may be speculative. Another concern was the potential impact of federal law, particularly the Consolidated Omnibus Budget Reconciliation Act of 1985, upon employers if the bill draft were enacted. Testimony indicated that the federal Act applies to employers of 20 or more employees who have worked for the employer for six or more months whether as full- or part-time employees and provides that upon termination of employment or the divorce of a covered employee and spouse, the terminated employee or divorced spouse would have the option of continuing coverage under the employer's health insurance plan at that person's own expense. Testimony indicated the potential problem that, if an employer were required to offer access to health insurance coverage for a part-time employee and that employee were divorced, for example, the employer would still have to provide access for the divorced spouse of the employee. It was noted that employers generally want to be able to manage the risk factors associated with offering health insurance coverage for employees and by mandating access for part-time employees, the bill draft, if enacted, could be inadvertently mandating an increase in the cost of health insurance coverage to the employer because the employer would be assuming a risk that the employer did not have before.

Basic Health Insurance Coverage

The committee considered a bill draft that allowed insurance companies, nonprofit health service corporations, and health maintenance organizations to offer a basic health insurance coverage that would be exempt from certain categories of mandated benefit coverages. The specific mandated coverages exempt under the bill draft were coverage for the diagnosis, evaluation, and treatment of alcoholism or drug addiction (NDCC Section 26.1-36-08), coverage for the diagnosis, evaluation, and treatment of mental disorders (NDCC Section 26.1-36-09), coverage for mammogram examinations (NDCC Section 26.1-36-09.1), coverage for surgical and nonsurgical treatment of temporomandibular joint disorder and craniomandibular disorders (NDCC Section 26.1-36-09.3), non-

discrimination provisions relating to chiropractic services (NDCC Section 26.2-36-12.1), and nondiscrimination provisions relating to optometric services (NDCC Section 43-13-31). A representative of Blue Cross Blue Shield of North Dakota indicated that Blue Cross Blue Shield of Oklahoma had introduced a basic health coverage plan with premium rates ranging from \$36 per month for a single contract for a person 20 to 25 years of age to \$200 per month for a family contract for persons between 55 and 65 years of age. On an individual contract basis, these rates were approximately one-half of the present premium rate in North Dakota. Testimony indicated that while no one has found the complete solution to the health insurance needs of the uninsured and underinsured, there seems to be some agreement that providing relief from mandated benefits, providers, and coverages should be one part of the effort to address those needs. It was emphasized that the concern about legislatively mandated benefits or coverages is not based upon an opposition to the benefits themselves; rather, the concern reflects the observation that if too many benefits are mandated the health insurance policy becomes unaffordable. However, a representative of the Commissioner of Insurance, in offering a word of caution, indicated it would be a fallacy to assume that a significant reduction in health insurance premium costs would result simply by exempting mandate requirements. Testimony indicated that mandated coverages in North Dakota have increased the costs of health insurance plans by approximately six percent. It was noted, therefore, that it may be speculative whether exempting mandate requirements would achieve the desired result.

A representative of Blue Cross Blue Shield of North Dakota indicated that if the bill were to be enacted and depending upon the level of discounts health care providers would provide for such a basic benefit package, a premium rate could be developed as low as \$25.20 per month for single persons between 18 and 29 years of age and \$214 per month for a family contract.

Concern was expressed, however, among some committee members that the basic health insurance coverage bill draft would not address the needs of those who are least able to purchase health insurance coverage, even at a substantially reduced cost. Comments indicated that a more imaginative solution may be necessary to ensure that the needs of all of those who require access to health insurance coverage are considered.

Mandate Reviews

The committee considered a bill draft that prohibited the introduction of legislation or the consideration of amendments mandating health insurance coverages or various other components of health insurance plans unless the proposal is accompanied by a report prepared by the Commissioner of Insurance which assesses the impact of the proposal. Testimony indicated the bill draft would address the issue of maintaining the affordability of adequate health insurance coverage. Testimony indicated there is a problem of increased unaffordability of health insurance coverage due to the increasing num-

ber of legislatively mandated benefits, coverages, or providers. The bill draft is patterned after House Bill No. 1672 (1989), which was defeated in the House. Additional testimony indicated that an independent analysis of the impact of a proposed mandate would be of assistance in evaluating the viability and necessity of the mandate. A representative of the Commissioner of Insurance indicated concern that a sufficient appropriation be included in the bill draft to ensure that the review required of the commissioner could be adequately undertaken.

Medical Assistance Eligibility

The committee considered a bill draft that required the Department of Human Services to extend eligibility for medical assistance to all infants up to one year of age and pregnant women, with family incomes not exceeding 185 percent of the federal poverty level, and to children from six years of age to eight years of age with family incomes not exceeding 100 percent of the federal poverty level. Testimony indicated that increasing eligibility limits for medical assistance is one method for addressing the needs of the uninsured and underinsured that is often considered. It was also noted that such an increase would aid in addressing the health insurance needs of those who may not be able to afford basic health insurance coverage, even at a reduced premium cost.

Testimony received from representatives of the Department of Human Services indicated the estimated cost of the expanded coverage for the 1991-93 biennium would be \$11,339,905, of which \$2,686,563 would be the state's responsibility. Testimony indicated that as a result of federal mandates the department is expanding medical assistance coverage for women and certain children whose family incomes do not exceed 133 percent of the federal poverty level. Additionally, federal mandates also require expansion, within the next several years, of medical assistance coverage for women and certain children whose family incomes do not exceed 185 percent of the federal poverty level; therefore, the bill draft accelerates a medical assistance eligibility expansion that the department would be required to implement within the next few years. It was noted that if an individual whose income is less than 185 percent of the federal poverty level is working that individual is probably receiving at or slightly above the minimum wage and generally does not have health insurance coverage.

Subsidized Health Insurance

The committee considered a bill draft that would have authorized the Department of Human Services to contract with private insurers to provide subsidized nongroup health insurance coverage to persons who are not eligible for medical assistance. The health insurance coverage would have been available to persons who are above medical assistance eligibility criterion and below 250 percent of the federal poverty level and would have been provided on a sliding fee scale based on income. It was noted that the bill draft would have addressed the important question of how do those who are least able financially to obtain basic health insurance coverage obtain that coverage.

A representative of the Department of Human Services estimated the cost per biennium of implementing the bill draft at \$92.6 million. The appropriation would have had to have been of general fund dollars as there are no federal funds available to assist in implementing this type of program.

Testimony indicated there may be a question regarding whether persons eligible for Medicare should be eligible for the kind of subsidized coverage contemplated under the bill draft. Additionally, testimony indicated that reimbursement to health care providers, which under the bill draft could not exceed the medical assistance reimbursement rate, would represent full payment to the provider. It was noted that present reimbursement levels are generally inadequate and that if the population for which this reimbursement level is paid is broadened more providers may leave the system.

Committee discussion indicated there were several unresolved questions with respect to the bill draft, such as whether the 250 percent of the federal poverty level figure should be lowered, whether the inclusion of Medicare recipients as participants in the subsidized health coverage program should be reconsidered, and whether the coverages provided in the subsidized health insurance policy should be reviewed.

Recommendations

The committee recommends House Bill No. 1042 to allow the offering of a basic health insurance coverage plan, free of certain mandated coverages, to individuals and employers with fewer than 25 employees who have been without health insurance coverage for at least 12 months preceding the date of application for the coverage. The Commissioner of Insurance would be required to assemble data related to the coverage provided under the bill and submit periodic reports to the Legislative Council regarding utilization of the coverage. The bill is effective through June 30, 1997.

The committee recommends House Bill No. 1043 to prohibit the introduction of legislation or the consideration of amendments mandating health insurance coverages or various other components of health insurance plans unless the proposal is accompanied by a report prepared by the Commissioner of Insurance which assesses the impact of the proposal. The bill provides an appropriation of \$40,000 to the commissioner for the purpose of implementing the report requirement.

The committee recommends Senate Bill No. 2053 to require the Department of Human Services to adopt options available under federal law to extend eligibility for medical assistance under Medicaid to certain infants and pregnant women. The bill provides an appropriation of \$11,339,905, of which \$2,686,563 is the state's responsibility.

The committee recommends Senate Concurrent Resolution No. 4002 directing a Legislative Council study of the feasibility and ramifications of adopting and implementing a state subsidized health insurance program, on a sliding fee scale basis, for certain uninsured and underinsured residents.

CONTROLLED SUBSTANCES REPORTING CENTER STUDY

Background

The goal of the controlled substances reporting center study was to study the feasibility and desirability of establishing a prescription drug reporting center for the reporting of controlled substance abuse.

The study was intended to determine the feasibility of establishing a mechanism to identify the potential abuse of a controlled substance that may be prescribed for individuals by physicians. It was also to determine whether a central prescription data bank would aid in targeting the growing problem of prescription drug abuse and be instrumental in helping eliminate that problem through identification of individuals abusing prescribed controlled substances.

Federal Law Governing Dispensing of Controlled Substances

The federal Controlled Substances Act and regulations implementing the Act establish extensive registration requirements for those who are engaged in dispensing, manufacturing, or distributing controlled substances. Persons engaged in the dispensing of controlled substances are required to register annually with the Drug Enforcement Agency. Registered individuals must comply with statutory requirements for controlled substances prescribing and dispensing, recordkeeping, and reporting. A separate registration is required for each principal place of business or professional practice at one general physical location where controlled substances are dispensed, manufactured, or distributed.

State Law Governing Dispensing of Controlled Substances

North Dakota has registration requirements similar to those found in the federal law. North Dakota Century Code Section 19-03.1-16 requires every person who manufactures, distributes, or dispenses any controlled substance within the state to obtain an annual registration issued by the Controlled Substances Board. Section 19-03.1-20 requires persons registered to manufacture, distribute, or dispense controlled substances to keep records and maintain inventories in conformance with the recordkeeping and inventory requirements of federal law and with any additional rules the Controlled Substances Board may issue.

North Dakota Century Code Section 19-03.1-22 governs the prescription of controlled substances in Schedules II, III, IV, and V. A Schedule II controlled substance is a substance that has high potential for abuse, has currently accepted medical use in treatment in the United States or currently accepted medical use with severe restrictions, and the abuse of which may lead to severe psychic or physical dependence. Schedule III controlled substances are substances that have a potential for abuse less than substances listed in Schedules I and II; have currently accepted medical use in treatment in the United States; and the abuse of which may lead to moderate or low physical dependence or high psychological dependence. Schedule IV controlled substances are

those substances that have a low potential for abuse relative to substances in Schedule III; have currently accepted medical use in treatment in the United States; and the abuse of which may lead to limited physical dependence or psychological dependence relative to the substances in Schedule III. Schedule V controlled substances are those substances that have a low potential for abuse relative to the controlled substances listed in Schedule IV; have currently accepted medical use in treatment in the United States; and have limited physical dependence or psychological dependence liability relative to the controlled substances listed in Schedule IV.

North Dakota Century Code Section 19-03.1-22 provides that except when dispensed directly by a practitioner, other than a pharmacy, to an ultimate user, no Schedule II substance may be dispensed without the written prescription of a practitioner. A Schedule III or IV substance that is a prescription drug may not be dispensed without a written or oral prescription of a practitioner, and the prescription may not be filled or refilled more than six months after the date of the prescription or be refilled more than five times, unless renewed by the practitioner. A controlled substance included in Schedule V substances may not be dispensed without the written or oral prescription of a practitioner. The prescription may not be filled or refilled more than six months after the date of prescription or be refilled more than five times unless renewed by the practitioner.

It should be noted that the various requirements under federal and state law relating to the registering of those who dispense controlled substances and the prescribing of controlled substances are directed at identifying the volume of controlled substances dispensed by any given practitioner and controlling the circumstances under which such a substance may be prescribed. This information is generally useful in reducing or identifying the diversion of prescribed controlled substances and prescription drugs. The "diversion" of these substances entails the prescribing or dispensing of inordinate amounts of the substances, professional misuse or abuse of the substances, or otherwise prescribing or dispensing substances in a manner that diverts the substances to an illicit use. The requirements do not directly address the situation in which the ultimate user of the prescribed controlled substance "shops" among practitioners for numerous prescriptions of controlled substances which are subsequently filled by various pharmacists.

Other States' Practices

Some states, in an effort to deal with prescription drug diversion, have adopted legislation that requires physicians to use special prescription blanks supplied by a designated state agency. These prescription blanks are usually three-part, or triplicate, forms furnished to the practitioner for a fee. The practitioner is required to use the prescription blanks when prescribing controlled substances included in Schedule II and certain controlled substances included in Schedule III. Typically, after the practitioner prescribes a controlled substance, the original and duplicate of the prescription form is delivered to the pharmacist for filling the prescrip-

tion. After the prescription is filled and upon proper endorsement by the pharmacist, the original or duplicate copy, depending upon the governing state law, is transmitted to the designated state agency within a certain period of time after the prescription is filled. The copy not transmitted to the agency is retained by the pharmacist. The forms retained by the pharmacist and practitioner must be made available for review or investigation if requested by the designated agency.

Supporters of the triplicate prescription form system assert that the system is effective in reducing prescription drug abuse and in curtailing the diversion of prescription drugs. Opponents of the system assert that the system is often costly and burdensome and may interfere with the prescribing and dispensing patterns for certain drugs, thereby limiting the treatment regimens available to practitioners. Among the states using the triplicate prescription forms system are California, Hawaii, Idaho, Illinois, New York, Rhode Island, and Texas.

Testimony and Committee Considerations

Committee testimony indicated that the establishment of a controlled substances reporting center would provide an efficient and cost-effective method for tracking the prescribing of controlled substances within the state and determining whether prescription users were abusing the process in an attempt to receive multiple prescriptions. The reporting center concept envisioned that each pharmacy in the state would be designated as a reporting site and equipped with a computer and modem. The pharmacy would be required to report specific information regarding a prescribed controlled substance to the reporting center computer on a periodic basis. Testimony indicated that the reporting center would most logically be located at the College of Pharmacy at North Dakota State University. It was estimated that the cost of providing the needed equipment in each of the approximately 250 pharmacies, or "peripheral reporting sites," would be between \$800 and \$1,000 per site, with the total cost of implementing the central reporting facility and approximately 250 reporting sites being about \$495,000. It was suggested that the committee consider establishing the reporting system on a pilot project basis, i.e., establish the central reporting facility with approximately 25 peripheral reporting sites to see how the system functions. It was estimated that the approximate cost for implementing such a pilot project would be \$50,000.

In the course of reviewing the feasibility of establishing a controlled substances reporting center, the committee considered a bill draft that would have established the reporting center on a pilot project basis with 25 registered pharmacies and drugstores designated as reporting sites. The bill draft would have required every registered pharmacy or drugstore designated as a reporting site to report to the center on a weekly basis detailed information regarding a controlled substance dispensed pursuant to a prescription. The reporting center would thereafter transmit the assembled information to the state Controlled Substances Board once each calendar quarter. The board would then review the reported

information for any disparities in normal dispensing or prescribing patterns and, if necessary, refer the information to the appropriate licensing board or the Attorney General for further investigation.

Testimony in opposition to the establishment of a controlled substances reporting center indicated prescription drug abuse in North Dakota is not a large enough problem to justify establishing such a reporting system. Additionally, it was noted that such a system threatens to compromise patient confidentiality by reporting to a third party with no relation to the patient what that patient is receiving as treatment. It was also noted that the funds appropriated

for establishing the reporting center system may be more appropriately expended for the purposes of hiring additional Drug Enforcement Unit agents or for lectures to senior pharmacy students so that they could detect individuals who may be abusing prescribed controlled substances.

Conclusion

The committee makes no recommendation with respect to the establishment of a controlled substances reporting center.

JOBS DEVELOPMENT COMMISSION

House Concurrent Resolution No. 3004 directed the Legislative Council to establish a Jobs Development Commission composed of legislators, officials from the executive branch of state government, officials from higher education, and representatives of the private sector to study methods and coordinate efforts to initiate and sustain state economic development and to stimulate the creation of new employment opportunities for the citizens of North Dakota. The Legislative Council also assigned to the commission Senate Concurrent Resolution No. 4056, which directed a study of the state's bountiful natural resources and outdoor recreation activities with an emphasis on the state's wildlife resources and enhancement of the resources for the benefit of North Dakota citizens and economic development.

Commission members were Senators John M. Olson (Chairman), Jack Ingstad, David E. Nething, Larry W. Schoenwald, Floyd Stromme, Art Todd, and Jerry Waldera; Representatives William G. Goetz, Roy Hausauer, Serenus Hoffner, Gary Knell, Jay Lindgren, Rosemarie Myrdal, Diane Ness, and Ben Tollefson; and Citizen Members Myron Bender, Douglas Eiken, Jim Fuglie, William C. Marcil, and Allan Thompson. Representative Dan Ulmer, prior to his resignation in October 1990, and Citizen Member Robert D. Koob, prior to his resignation in July 1990, were members of the commission.

The report of the commission was submitted to the Legislative Council at the biennial meeting of the Council in November 1990. The report was adopted for submission to the 52nd Legislative Assembly.

JOBS DEVELOPMENT STUDY

House Concurrent Resolution No. 3004 directed the Legislative Council to form a Jobs Development Commission composed of legislators, officials from the executive branch of state government, officials from higher education, and representatives of the private sector to study methods and coordinate efforts to initiate and sustain state economic development and to stimulate the creation of new employment opportunities for the citizens of North Dakota. The resolution was recommended by the Legislative Council's 1987-88 interim Jobs Development Commission which concluded that the commission, which was also established during the 1985-86 interim, has provided an ideal forum for the formulation of economic development legislation and for individuals and representatives of the public and private sectors to discuss state economic development policies with legislators.

Background

North Dakota's economy was hit hard during the 1980s by both cyclical and structural economic forces and today remains largely in a stalled or recessionary mode in comparison to the economic recovery and growth experienced in the United States as a whole. The high dependence of the state's economy on its agricultural and energy sectors has left the state's economy vulnerable to external forces, and the price

declines affecting the state's dominant commodity industries and the recent drought conditions have inhibited economic recovery.

Recent studies concerning North Dakota business environment vary considerably. According to one nationally recognized manufacturing climates study [Grant Thornton, Grant Thornton Manufacturing Climates Study, June 1989], the comparative superiority of North Dakota's manufacturing climate is apparent. In that study North Dakota is ranked first among 21 low intensity manufacturing states, based on factors deemed most important by manufacturers to their business. However, other purported "measurements" of states' economic development success are not so flattering. A development "report card" prepared by the Corporation for Enterprise Development and sponsored in part by the AFL-CIO and American Federation of State, County and Municipal Employees [Corporation for Enterprise Development, Making the Grade: The Development Report Card for the States] gives North Dakota a "C" in economic development performance, a "D" in economic vitality, a "C" in economic capacity, and an "F" in economic policies. According to another study, North Dakota ranked 49th among the states in 1987 based on actual state performance in stimulating entrepreneurial activity and economic expansion.

Notwithstanding these measurements of state entrepreneurial activity, signs of an entrepreneurial business climate in North Dakota exist as indicated in a working paper prepared by the Council of State Policy and Planning Agencies (CSPA) in conjunction with research conducted under a grant from the Northwest Area Foundation [Buss and Popovich, Growth From Within: New Business and Rural Economic Development in North Dakota, November 1988].

The CSPA report concludes that the entrepreneurial spirit—demonstrated by the thousands of new businesses in the state and the over 40,000 jobs they created between 1980-87—is very much alive throughout North Dakota and is an important asset that has been and can continue to contribute to the state's economy. The report suggests that nurturing the supportive environment for business creation should be a goal of development strategies for all levels of government in all regions of the state and, because North Dakota already has a host of programs and public and private organizations that provide services to businesses, the main task is to improve outreach, enhance cooperation between programs, and gauge client needs and program performance to ensure that available resources are allocated to the most effective efforts.

The states have undertaken a wide and innovative array of policies to promote economic development and diversification. Across the nation state policymakers are concerned with economic growth and diversification; job creation, retention, and expansion; the quality and skills of the labor force; and the national and international competitiveness of each state's major industries. The major state economic development strategies include recruit-

ment of domestic industrial plants, financial and technical assistance to new and existing small businesses, aid with technology innovation for new products and processes for both large and small businesses, export promotion and recruitment of foreign investment, targeted help for mature industries and emerging industries, aid to distressed regions and industries, general encouragement of entrepreneurship, and emphasis on tourism. Economic development concerns have also been the prime motivating force behind reforms in education, job training and retraining, vocational education, infrastructure, government reorganization, unemployment and workers' compensation systems, administrative regulation, and taxation.

As in most other states, economic development and job creation in North Dakota has now assumed a high profile, which is represented by recent initiatives from the public and private sectors of the state.

The director of the Economic Development Commission is directed, in part, by North Dakota Century Code Section 54-34-06 to plan, execute, and direct a program of publicity, research, and agricultural and industrial promotion which will attract investors, investment capital, and new residents to the state; foster and promote tourism and international trade; and assist in improving the business and agricultural climate of the state to encourage the growth and development of business and industry.

The Economic Development Commission has approved a strategic marketing plan that consists of seven strategic directions for providing the groundwork for a successful economic development policy for North Dakota. These seven strategic directions are explained in the 1989 plan as follows: (1) the North Dakota Economic Development Commission should be charged with the responsibility and endowed with the resources to become the trailblazers and spearhead of our economic development effort. The commission should be the lead catalyst in coordinating, linking, and amplifying the efforts of other economic development entities in North Dakota, particularly at the public and educational levels; (2) we should diversify our economy by attracting basic sector and service-exporting industries from outside the state's borders; (3) we should continue exporting the strengths of our core industries—agriculture and energy; (4) we should increase our level of commitment to tourism with a focused, push/pull type strategy. Every year, tourism has demonstrated an increasingly significant ability to stimulate new wealth, jobs, and hospitality-industry growth. We should utilize promotional, push-type strategies to lure more tourists and dollars to our state, while building long-term, pull-type strategies through increased tourist attractions; (5) we must assist in the startup of new businesses, plus the retention and expansion of our state's existing businesses; (6) we should do everything in our power to ensure that our quality of education continues as one of our most powerful assets in attracting, retaining, and growing the talent and knowledge that will power tomorrow's opportunity; and (7) we should pursue a major public relations effort coupled with the previous six directions.

According to the 1989 strategic marketing plan, the Economic Development Commission offers a range of programs aimed at promoting economic development. By major activity, they are (1) financial packaging assistance to businesses interested in locating, expanding, or starting up in North Dakota; (2) industrial recruitment and promotion including development and presentation of comprehensive proposals to targeted industries, participation in trade shows, responses to requests for information, and coordination with local development groups; (3) tourism promotion and development of tourism sites and facilities; (4) international trade development, including support to North Dakota World Trade, Inc., and export assistance; (5) economic development planning; (6) counseling and training for North Dakota small business on management and financial planning; (7) provision of information about North Dakota economic opportunities, economic data, and general business questions; (8) technical assistance to, and coordination of, other economic development organizations; (9) research into the feasibility of various development opportunities; and (10) assistance to North Dakota businesses interested in contracting with the federal government.

The 1989 strategic plan suggests that some additional programs and incentives be put in place which could dramatically improve the state's performance in economic development including a standing committee on science and technology, special facilities for math and science programs, joint industry-university support programs, technology-orientated training programs, expansion of venture capital assistance, expansion of the feasibility study cost sharing program, product development corporation, direct research and development grants, sales tax exemptions on new manufacturing equipment, state support for the small business innovation research program, financing programs for tourism site development, enhanced export assistance, assistance for cities and counties in revenue bond financing activity, expansion of the block grant program for plan expansions and retention, long-term, low cost financing for pollution control equipment, and entrepreneurial scholarship programs.

In an effort to foster coordination between the various public and private agencies and organizations involved in economic development in the state, the Economic Development Commission created the economic development roundtable, composed of representatives of those public and private agencies and organizations. The organizational structure of the roundtable consists of "clusters" which are working groups formed to address particular aspects of economic development in the state, including business financing, community development, tourism, statistical reporting, agriculture, applied research, and education. These clusters are designed to cut across the jurisdictional boundaries between agencies and the public and private sectors.

Economic development and job creation in North Dakota is encouraged and facilitated through a wide variety of legislative initiatives, including business and industrial financing and technical assistance, tax incentives, capital formation, state and local development agencies, and promotional activities. Some of

the more recent legislative initiatives have included the establishment of a public venture capital corporation and the provision of income tax incentives designed to encourage the formation of private venture capital corporations; modifications to the state's securities laws to facilitate in-state capital formation; support for university research and technology transfer; establishment of small business and agricultural loan programs at the Bank of North Dakota; provision of tax incentives for corporate research and property used for academic research purposes; energy tax relief; authorization for the establishment of city and county job development authorities; protection of confidential proprietary information generated from university research or of trade secrets of a business receiving business assistance; the restructuring of the Economic Development Commission; establishment of the statewide nonprofit development corporation with authority to take equity positions in new and existing businesses for the purpose of developing or expanding primary business in the state; increased funding for economic development purposes; the requirement that in-state products be used in state construction; authorization for the State Board of Higher Education to authorize and encourage institutions of higher education under its control to enter into partnerships, joint ventures, or other contractual arrangements with private business and industry for the purpose of business or industrial development or fostering basic and applied research or technology transfer; establishment of an economic feasibility institute at North Dakota State University to initiate, encourage, and enhance the commercial development of both agricultural and nonagricultural products, processes, commodities, and services in North Dakota through the supervision and performance of economic feasibility research; provision of tax exemptions for new industries; authorization of tax increment financing to assist in development of industrial or commercial property; and reduction of the sales and use tax for equipment purchased by a new or expanding business.

North Dakota 2000 Committee - Commission Considerations

The Greater North Dakota Association and the Northwest Area Foundation funded a study undertaken by North Dakota State University's Department of Agricultural Economics/Agricultural Experiment Station concerning North Dakota's economy and projections of future trends in the state's economy. The results of that study raised many concerns about the future of the state. At the same time many highly respected individuals in the field of economic development were invited to the state to discuss how North Dakota stacks up and what is needed to revitalize the state's economy. In reviewing the conclusions of those individuals, the three observations that stood out are that (1) economic development is important for the state; (2) many agencies and organizations are involved in economic development, but they are running in a number of directions; and (3) there is no common direction or set of strategies indicating where the state wants to go or who should direct its efforts.

The North Dakota 2000 Committee was formed by the Greater North Dakota Association based on concerns about the state's economy in the absence of any long-term strategic plan to address those concerns. The North Dakota 2000 Committee is composed of 29 individuals with a high level of influence in the state assigned to help formulate a common vision and a strategic plan for new wealth creation in North Dakota. The committee realized that it would need additional help and insight and therefore contracted with the consulting firm, SRI International, for the purpose of designing broad strategic responses to the economic forces affecting the state.

SRI International prepared its first in a series of papers intended to serve as a basis for discussions of where North Dakota's economy stands today. That report [SRI International, North Dakota's Economic Challenge, April 1988] provided four major conclusions: (1) North Dakota's economy is stagnant; (2) the state's economy will not improve on its own without major changes; (3) the downward trend in the state's economy did not evolve from cyclical changes, but rather the downturn has resulted from structural changes globally, nationally, and within the state's economy; and (4) North Dakotans have a negative mind set about the state economic potential and a poor self-image for competing in the global economy. The consultant's conclusion that North Dakotans have a negative mind set was based on interviews with the state's key leaders, which indicated that people in the state realized what has happened to the state's economy but are under the impression there is nothing the state can do and are simply waiting for the state's economy to turn around. The consultant's first report was not meant to provide answers to the state's economic woes, but rather was intended to review the statistics associated with the state's economy and to get a feel for what was on the minds of the people in the state through personal interviews.

A second working paper prepared by SRI International [SRI International, North Dakota's Future: Building a Specialized Economy for the 21st Century, June 1989] for the North Dakota 2000 Committee included assessments of some of the new directions that are needed in the state. The key findings of the second working paper included (1) North Dakota is very much at risk, is in a rapidly changing environment, and opportunities for economic recovery will disappear without structural changes in the state's economy; (2) the state's economy has changed before and other states have been able to revitalize their economies; and (3) the shape and dimensions of the North Dakota economy are not assured. Based on these findings the working paper identifies new directions that are needed with the focus on technology, human resources, capital, entrepreneurship, and quality of life amenities and facilities. SRI's recommendations included the state creating a "can do" mind set or attitude; identification of some public policy changes that would create and foster a more favorable environment for new wealth creation in the state; opportunities for focusing private sector initiatives in the area of new wealth creation; and opportunities for combining resources in new and creative ways, particularly in the area of entrepreneurship.

These findings along with preliminary recommendations were distributed through 340,000 newspaper inserts and 40 town hall meetings in October 1989. Questions asked were: Do you agree with the findings and recommendations of the committee? Is Vision 2000 on the right track? What changes are needed?

The answers varied, but generally, a consensus emerged that change was needed because our problems were deeper than what \$5 wheat, \$30 oil, and a good rain could solve. Instead, our citizens agreed that North Dakota needs long-term, deep-down, fundamental strategies for creating a stronger, more diversified economy.

One proposal around which there was strong consensus was that North Dakota should pursue a four-part economy that builds on our existing strengths. When these interrelated economies grow, they will then help strengthen and diversify each other in order to meet the needs of the global marketplace. This four-part economy would consist of agriculture-plus, energy-plus, manufacturing-plus, and services-plus. The reasoning for this plan is to build upon and not abandon each of our four existing economic generators, and to focus more on "value added" in each sector. By producing finished products rather than raw commodities, North Dakota will create more new jobs.

In order to expand these four basic sectors, several key components must be geared up to offer assistance. They are technical development and transfer, human capital, entrepreneurship, financial capital, and a good quality of life. The participants at the town hall meetings agreed but said it was not enough. They requested the committee to expand its analysis to include reducing the size of government and making changes so it is more responsive to the current and future needs of North Dakota, identifying ways of relating and adjusting to the forces outside of our state which set the prices for our products, and placing more emphasis on water development and distribution in the state.

The North Dakota 2000 Committee incorporated these new areas into the study following the town hall meetings. The committee determined that a new vision for building a new North Dakota was needed and stated it as follows: "Our vision is to unite together to build a new North Dakota so we may realize our highest potential in creating a solid, diversified, and successful rural economy, tailored to our needs and accomplished at a pace we can afford." The committee recognized that such a vision would require tough choices, more specialization, some unique and creative partnerships, more efficiencies in government and services, and institutional reform.

To begin the implementation process of this new vision for North Dakota, the Vision 2000 Committee determined that action was required in eight major areas. Each area represented a natural clustering of individual initiatives under a general economic infrastructure element. The recommendations were outlined in two forms: "flagship" initiatives and other related initiatives. The flagship initiatives were defined to have broad, evensweeping scope. The second category of recommendations was supportive of the flagship initiatives.

The eight flagship initiatives for building a new North Dakota are (1) creation of a Compact for Education Excellence; (2) creation of the Development Bank of North Dakota; (3) establishment of a Commission on Science and Technology; (4) establishment of the North Dakota entrepreneurial challenge; (5) launching of a community partners initiative; (6) establishment of the coalition for statewide infrastructure projects including state leadership in the Garrison Diversion Project, telecommunications networks and applications, and designating an interport for North Dakota; (7) igniting the campaign for state government reform; and (8) creation of a Northern States Policy Institute.

The Jobs Development Commission heard testimony about and in some cases considered bill drafts relating to many of the eight flagship and related initiatives recommended by the North Dakota 2000 Committee.

Human Capital - Compact for Education Excellence - Establishment of the North Dakota Entrepreneurial Challenge

The North Dakota 2000 Committee recommended establishment of a new Compact for Education Excellence, as developed in California and other states and as proposed by the National Governors Task Force on Education and the President at the Education Summit in September 1989. The purpose of this recommendation is to help achieve the goal of having the nation's best rural state education and training system by the year 2000. The committee also recommended establishment of the North Dakota entrepreneurial challenge. Related objectives included changing of teaching of new and small business formation and management and encouragement of new curriculum on economics, business development, and entrepreneurship.

The commission received testimony from the Superintendent of Public Instruction concerning that department's progress in implementing the recommendations of the 2000 Committee through emphasis on economics education and expansion of the school mission to include community development as a part of the department's future vision for school districts. Projects included a school-based development corporation idea sponsored by the Bremer Foundation designed for small rural school districts to develop community, school-based economic projects that provide some entrepreneurial training for students; a pilot demonstration program on rural schools and community economic development project initiated by Organizations Concerned About Rural Education; and the business challenge program sponsored by the Greater North Dakota Association and Dickinson State University which involves a week-long business experience for students.

A representative for the State Board for Vocational Education reviewed the board's entrepreneurship programs and curriculum, including the small business management program, which is a program of business management, education counseling, and information assistance which is coordinated and disseminated on a long-term basis to persons presently operating a small business, including classroom in-

structions once per month and business counseling at the small business location. An adult entrepreneurship program is also being offered twice a year in 12 communities which provides instruction on starting a successful business. The program consists of 40 hours of classroom instruction and 80 hours of one-on-one consultation. Other courses available to school districts for high school students as designed by the board include a course on entrepreneurship and an introduction to entrepreneurial careers. Another representative for the board testified concerning current efforts taking place in the state with respect to on-the-job education and training and related efforts. Two types of programs were available, adult part-time vocational education and education and training for industry and business development. The representative suggested three ways for providing increased funding for on-the-job training, including legislation providing for tax credits, utilization of the present law which allows a city or county to levy a tax for the purposes of providing for vocational and on-the-job training services, or legislation authorizing the State Board for Vocational Education to develop and administer a new industrial jobs training program in North Dakota.

Financial Capital - Development Bank of North Dakota

The North Dakota 2000 Committee recommended the Legislative Assembly create a new entity named the Development Bank of North Dakota to perform all existing duties of the Bank of North Dakota and to assume the functions currently performed by the Economic Development Commission. In related initiatives, the 2000 Committee recommended a review of present law to determine changes needed for the development of an effective banking system and to update banking laws, including allowing interstate banking, to meet the financial and loan service needs of businesses that export products and services outside of the state.

The commission initially decided to review a bill draft that established a Development Bank of North Dakota; however, later recommendations by the North Dakota Rural Development Academy team and the Governor's Committee of 34, and agreed to by the 2000 Committee, did not include the creation of the Development Bank of North Dakota. As a result, the commission decided not to pursue consideration of the bill draft.

Testimony was received from representatives of the banking industry and the Department of Banking and Financial Institutions concerning changes needed in the state's banking laws to encourage economic development. Topics of concern included interstate banking; intrastate or branch banking; greater powers for state-chartered banks, including real estate sales and brokerages as well as enhanced insurance sales power; a fairer tax structure with respect to the taxation of state-chartered banks and credit unions; and the expression of concern with respect to real estate foreclosures being cumbersome and time consuming, including the length of redemption periods and the debtor's right to remain in possession during that redemption period, the lack of opportunity to obtain a deficiency judgment, the con-

fiscatory price defense, the need to allow the second mortgage holder to sue on the debt rather than to foreclose, the requirement that when a bank does foreclose it may only hold farmland for three years, the need for revision of the state's crop mortgage laws, the need to repeal statutory super liens for agricultural processors and suppliers, the need for a true central filing system for security interests and personal property, and the need to revise exemptions available for judgments and in bankruptcy.

The commission considered a bill draft that authorized regional reciprocal interstate banking. The bill draft required the State Banking Board to disapprove any proposed acquisition of a state bank if the acquisition would result in undue concentration of resources or substantial lessening of competition in North Dakota and required that the acquisition bring net new funds into the state at a level of total equity capital exceeding \$3 million for a newly chartered bank and \$1 million for an acquired bank.

A representative of the North Dakota Bankers Association testified in favor of the bill draft citing a number of reasons for the support including (1) increased competition and diversification resulting from interstate banking would provide the state a much more effective and competitive banking system; (2) deregulation in the financial services industry has placed the banks at a competitive disadvantage with respect to powers, taxes, and geographic limitations; (3) bankholding companies provide potential for job creation in the location of headquarters and the provision of banking services in the state; and (4) small, local banks have a definite niche in the community and will continue to flourish, despite interstate banking authorization.

The banking representative suggested (1) the net new funds provision is probably unenforceable and not necessary in light of an invigorated Federal Community Reinvestment Act, which requires the rating of banks with respect to their meeting the credit needs of the community; and (2) that the Bankers Association will be considering whether to recommend nationwide, rather than regional, authorization to make capital available from across the country.

A representative for the Independent Community Banks of North Dakota opposed the bill draft arguing that interstate banking reduces North Dakota regulatory power over the banking industry and that local banks, local ownership, local jobs, local management, and local distribution of dividends would be lost.

The commission considered a bill draft that removed the restrictions on the number of facilities that a bank may have for drive-in or walkup services other than at the main bank building. Representatives for the Department of Banking and Financial Institutions and the North Dakota Bankers Association testified in favor of the bill draft.

The commission members favored the bill drafts as a way to provide a more effective banking industry, one able to meet the needs of economic development in the state.

Research and Technology Transfer - Commission on Science and Technology

The 2000 Committee recommended that a Commission on Science and Technology be created to oversee the development of applied research and technology to facilitate greater interaction between the research universities and business in meeting the technology needs of industry in the state. The committee also recommended that North Dakota State University take the initiative to design and implement a new model for the Cooperative Extension Service.

A representative of the state's Roughrider Equity Corporation provided an update on the status of the formation of the corporation and its activities. The corporation was formed to (1) take equity positions in new and existing businesses in North Dakota; and (2) to provide oversight for funds earmarked for the Center for Aerospace Sciences, the Energy and Environmental Research Center, and the Center for Innovation and Business Development.

A representative of the Center for Innovation and Business Development at the University of North Dakota testified concerning projects that the center was involved in and (1) indicated support for an Advisory Commission on Science and Technology; (2) requested increased support for the small business innovation research program to assist the state's manufacturers and researchers to develop new technology with federal dollars; and (3) requested additional funding for patent and technology commercialization.

A representative of the North Dakota State University Extension Service testified concerning the future role of the Extension Service in economic development in the state; the feasibility and desirability of providing extension services to the state's tourism industry; and a restructuring plan that was based on a comprehensive set of recommendations developed by a restructuring plan development team appointed in January 1989.

The commission considered a bill draft that established an Advisory Commission on Science and Technology to provide oversight, ensure adequate funding, and facilitate interaction and coordination in the development of policies and programs that respond to the scientific and technological needs and opportunities of business and industry in the state through basic and applied research and technology transfer, product commercialization, agricultural and industrial extension, and private sector research and development, with emphasis on producing and formulating value-added products and processes in the economic sectors of advanced agriculture and food processing, energy byproduct development, export services and tourism, and advanced manufacturing.

The commission considered a bill draft that provided funding for patents and technology commercialization activities at the state's research universities.

The concepts in both bill drafts were later incorporated into the recommendations of the Governor's Committee of 34 and the separate drafts were tabled by the commission for that reason.

Physical Infrastructure - Coalition for Statewide Infrastructure Projects

The 2000 Committee recommended that North Dakota establish a "Coalition for Infrastructure Projects" to develop three key elements of our state's infrastructure—water resources, telecommunications, and advanced air transportation.

A representative of the North Dakota Aeronautics Commission updated the commission on the development of an air cargo facility for North Dakota. An advisory committee was convened in August 1989 and a direction was outlined. The committee's desire was to focus on international regional cargo and it directed the commission to produce a work scope for a consultant selection. In January 1990 a consultant selection committee interviewed four firms and selected TRA Airport Consulting. On February 22, 1990, an application for a feasibility study for an interport concept was submitted to the Federal Aviation Administration. The study simply would be to investigate the cargo market internationally and the possibilities of North Dakota being a center collection point for the North American continent.

A representative of the Educational Telecommunications Council and the coordinator of the Higher Education Video System provided the commission with updates on telecommunication activities in the state. The plans developed by the Educational Telecommunications Council call for a two-pronged attack in building an integrated statewide network. A simultaneous top-down and bottoms-up approach is planned with an eventual meeting of the systems. The Department of Public Instruction, the Educational Telecommunications Council, and local school districts are working on the bottoms-up approach. Regional planning districts are being formed. These districts will encourage the clustering of schools into distance learning cooperatives and the study of various delivery technologies. Clusters of school districts would be free to pick the technology that best meets local needs.

The North Dakota University System and the Information Services Division are working on the top-down approach. They are responsible for developing the regional switching hubs for video activities and developing and managing the long distance lines required to connect the hubs. Upon completion of the regional hubs and local clusters, the two will connect through a common statewide transmission format. Interactive video communications then could connect all corners of North Dakota.

State and Local Government - Campaign for State Government Reform

The North Dakota 2000 Committee recommended that the state legislature, in cooperation with the Governor, implement a campaign of state government reform by initiating appropriate legislation for reforming the state government to reflect the future needs of the state's economy and the visions of its citizens.

A representative of the Governor's office testified concerning future state and local government restructuring efforts with the results of the December

referral election and other factors providing an appropriate opportunity to begin a restructuring effort in the state. Discussions were begun in January 1990 with the Northwest Area Foundation representatives which resulted in a grant proposal being submitted to that foundation entitled "Achieving Government Reorganization in North Dakota - A Consensus Building Model." In early April the Northwest Area Foundation indicated that it would fund the proposed project for the first three years in the amount of \$600,000. Additional funding in the amount of \$100,000 was committed by the Bremer Foundation for the second and third years of the project, while other contacts have been made with other foundations soliciting funds to carry the project through five years.

The proposal involves a staggered series of commissions relating to public education, higher education, local government, and state government (executive, judicial, and legislative branches). Each commission will operate for a period of approximately six to eight months, each concluding with a two- or three-day consensus building session utilizing a consensus building model. The oversight body for this process is a coordinating council, consisting of government representatives from the judicial, executive, and legislative branches and private sector representatives from the Greater North Dakota Association, the AFL-CIO, and the rural electric cooperatives. The coordinating council was established because the Northwest Area Foundation desired to ensure that the process was kept as free from politics as possible and that the project continue beyond the term of the present Governor. The process will involve a three- to four-year period of consensus building through commissions with a two-year follow-on period of continued implementation.

The commission considered a concurrent resolution draft directing the Legislative Council to study the feasibility and desirability of the privatization of some state government services, including a determination of whether state government is competing unnecessarily and unfairly with the private sector and the advisability of restricting that governmental competition. The North Dakota 2000 Committee, as part of its call for state government reform, recommended that some state government functions be examined for possible privatization on the basis, in part, that North Dakota has a high number of state employees as compared on a per-capita basis with other states.

North Dakota Rural Development Academy - Governor's Committee of 34

In January 1990 the Governor, on behalf of the state of North Dakota, applied to participate in a state policy academy on rural economic and community development. Ten states including North Dakota were selected on a competitive basis to participate. Other states selected were: Arkansas, California, Iowa, Maine, Michigan, Mississippi, Missouri, Pennsylvania, and Wyoming.

Academy Session I was held in Minneapolis, Minnesota, from April 28 through May 3, 1990, and Academy Session II was held in Sheridan, Wyoming, from July 7-12, 1990. In addition to those dates,

North Dakota academy team members met before, between, and following those sessions to map out a rural development strategy for the state.

In 1989 the North Dakota 2000 Committee began working toward developing a vision for North Dakota, and in March 1990 released a report to the people of North Dakota entitled "The Vision 2000 Report."

As a result of these two efforts, the North Dakota Economic Development Commission asked the Governor to appoint a broad-based committee to develop and implement a comprehensive economic development legislative program for 1991. The Governor selected 34 members from various economic development-related entities, including 11 members of the Rural Academy team and four members from Vision 2000. That group became known as the Governor's Committee of 34.

On August 7, 1990, the Committee of 34, relying heavily on the input of the Rural Academy and Vision 2000, unanimously adopted a comprehensive legislative agenda outlined in the "Growing North Dakota" report. The report contains 11 general strategies and many specific recommendations for implementation of the strategies. The suggested strategies are (1) maximize the use of Bank of North Dakota profits; (2) enhance the capabilities of the North Dakota Economic Development Commission; (3) create a primary sector development fund that would be used to expand the economy in value-added agriculture, manufacturing, energy byproduct development, and exported services; (4) develop a science and technology corporation to tap the resources of higher education and link it to the state economic development delivery system; (5) revitalize the agricultural industry through diversification; (6) develop capacity building for economic development at the local level; (7) deliver a strong local community economic development education program; (8) provide for a targeted recruitment program; (9) enhance minority business; (10) provide for business development for women; and (11) develop entrepreneurship awareness programs for bankers.

The commission considered a bill draft that incorporated the specific recommendations of the "Growing North Dakota" report. The bill draft replaced the Economic Development Commission with the newly created Department of Economic Development and Finance as the state agency responsible for efforts intended to enhance the economic development in the state; required the Governor to appoint a director responsible for the management of the department; required the Governor to appoint a member of the Governor's staff as coordinator of economic development to facilitate cooperation between state agencies concerned with economic development and to work closely with the Bank of North Dakota; established the department's structure to include a Division of Finance, a Division of Marketing and Technical Assistance, and a Division of Science and Technology; replaced the statewide nonprofit development corporation with the North Dakota Economic Development Corporation; provided that the deputy director of the Division of Finance would be the chief executive officer of the corporation; expanded the duties of the corporation to allow the providing of loans or other

financing for new or expanding businesses in North Dakota or relocating businesses in North Dakota; established a revolving primary sector development fund to be used by the corporation to take equity positions or provide loans with moneys in the fund targeted for a distribution of 60 percent rural, 20 percent urban, and 20 percent minority businesses; created a Science and Technology Corporation to provide a program and budgetary interface between the Department of Economic Development and Finance and the North Dakota University System with the primary objective to focus the intellectual and technical resources of the university system on the discovery, development, and application of scientific and technological principles and concepts upon North Dakota's primary sector businesses, and provided that the chief executive officer would be hired by the corporation and would act as deputy director of the Division of Science and Technology; provided for intensifying and diversifying production agriculture by making changes to the beginning farmers program, creation of a program designed to provide loans and interest rate reductions for nontraditional crops or livestock and other on-farm businesses; provided money for a Pride of North Dakota program to increase marketability of products made in North Dakota; provided that the Agricultural Products

Utilization Commission must administer cooperative marketing grants and farm diversification grants and provided moneys for the farm management program and farm mediation service; created a partnership in assisting community expansion program designed to provide loans in cooperation with a lead financial institution and to provide for the buydown of interest rates in cooperation with the local community; mandated the collocation of small business development centers, regional councils, small business management programs, area extension services, and other regional development entities to receive state funds; provided that regional councils must provide technical assistance for primary sector businesses by leveraging local funds and by hosting quarterly business outreach forums to strengthen entrepreneurship and interchange with potential investors; provided money for the Dakota Spirit and targeted recruitment programs; created an office of minority development in the Department of Economic Development and Finance; and required the department to devote the necessary resources to increasing opportunities for women. The bill draft provided for the allocation of the earnings of the Bank of North Dakota for the biennium of July 1, 1991, to June 30, 1993, as follows:

Department of Economic Development and Finance	\$ 5,800,000
Primary sector development fund	7,000,000
Science and Technology Corporation	3,500,000
Partnership in assisting community expansion fund	3,000,000
Agriculture partnership in assisting community expansion fund	500,000
Beginning farmer program	1,000,000
Commissioner of Agriculture	
Pride of Dakota logo promotion	250,000
Agricultural mediation service	750,000
Board of Vocational Education	
Adult farm management program	250,000
Agricultural Products Utilization Commission	
Farm diversification grants	450,000
Cooperative marketing grants	300,000
Total transfer, retention, or allocation	\$22,800,000

The bill draft also provided for a transfer of funds to the primary sector fund, an appropriation to the Science and Technology Corporation, appropriation reduction requirements should the bank earnings be lower than anticipated, and an emergency clause.

A representative of the Governor's Committee of 34 testified in favor of the bill draft with a request

that the allocation of the primary sector fund money be changed to provide for a distribution of 40 percent rural, 20 percent urban, 20 percent minority, and 20 percent undesignated. Any unused funds would be transferred during the second year of the biennium to the undesignated fund for use in any of the three targeted areas.

Commission members concluded it was important

that the commission support the extensive work done by the 2000 Committee, Rural Academy, and Governor's Committee of 34 in presenting a comprehensive package for economic development for the state.

Additional Commission Considerations

In addition to the considerations of the commission made in response to the recommendations of the 2000 Committee and the Governor's Committee of 34, the commission considered other issues relating to economic development in the state.

Representatives of the Basin Electric Power Cooperative and the Dakota Gasification Company described Basin Electric's facilities and reviewed the byproduct potential of the Great Plains plant.

A representative of the Myron G. Nelson Fund, Inc., reviewed for the commission the activities of that fund. The commission considered a bill draft that allowed the income tax credit for investment in venture capital corporations and the Myron G. Nelson Fund to be claimed under the optional simplified method of computing the state income tax (short form). State law presently provides income tax credits that apply only on the long form income tax return against any state income tax liability of taxpayers who invest in venture capital corporations qualified under North Dakota Century Code Chapter 10-30.1 and the Myron G. Nelson Fund established under Chapter 10-30.2. Under both chapters a taxpayer must claim the income tax credit, which is equal to 25 percent of the taxpayer's investment (up to the total tax credit of \$250,000 under Chapter 10-30.1) in the taxable years in which full consideration for the investment is paid by the taxpayer. The amount of the tax credit that exceeds the taxpayer's liability for that year may be carried forward as a tax credit for seven taxable years. Under existing law taxpayers who invest in venture capital corporations may not claim the allowable income tax credits on the short income tax form. The bill draft allowed taxpayers to claim those tax credits on the short form income tax return for taxable years beginning after December 31, 1990. State law provides that a taxpayer is eligible to claim a tax credit only in the taxable years in which the full consideration for the investment is paid by the taxpayer or received by the venture capital corporation. The proposed language in the bill draft that authorized tax credits on the short form income tax return, in light of the effective date clause, would not apply to tax credits earned in taxable years prior to 1991 but would apply to tax credits carried forward from a taxable year prior to 1991. The committee considered amendments to the bill draft that allowed taxpayers who did not claim the income tax credit for investment under Chapter 10-30.1 in the appropriate taxable years, to claim the allowable tax credit for previous years on the short income tax form for taxable years after the effective date of the Act.

A representative of the Myron G. Nelson Fund testified in favor of the bill draft saying it would provide a necessary boost to help raise investments from the private sector. A representative of the Tax Department testified that the change could have a

significant negative fiscal impact although it was difficult to ascertain the exact amount. The Tax Department representative also testified that the proposal to allow taxpayers to claim income tax credits retroactively may result in an unconstitutional "donation" by the state.

The commission considered a bill draft that allowed tax credits for investments by banks, savings and loan associations, trust companies, and insurance companies in venture capital corporations organized under Chapter 10-30.2 in the same manner as provided with respect to the Myron G. Nelson Fund. The bill draft authorized state banks to invest in the stock of the Myron G. Nelson Fund.

The commission considered a bill draft that removed the sales and use tax for new manufacturing machinery and equipment purchases. A representative of the Tax Department testified concerning the department's experience in dealing with manufacturing businesses that are seeking the reduced rate of three percent on manufacturing equipment.

The commission considered a bill draft that provided for payment of a license fee in lieu of property taxes on leasehold interests and improvements on state-owned property when used for tourism or concession purposes.

Commission members concluded that the adoption of the four bill drafts would further the commission's goal of providing increased opportunity for investment in the state.

The commission considered a resolution draft directing the Legislative Council to study, analyze, and evaluate, with the assistance of a consultant, public policy as determined by the Legislative Assembly and its relationship to the state's ability to enhance economic development. The commission concluded that although the North Dakota 2000 Committee and the Governor's Committee of 34 recommendations call for improving the state's economic position and would make sweeping changes there was still a need for additional study to ensure that the state develops a rational overall fiscal policy that considers criteria such as revenue, productivity, simplicity, equity, competitiveness, economic neutrality, intergovernmental neutrality, and administrative feasibility.

Recommendations

The commission recommends Senate Bill No. 2058 to use the profits of the Bank of North Dakota to provide a comprehensive economic development program.

The commission recommends Senate Bill No. 2059 to provide for nationwide interstate banking.

The commission recommends Senate Bill No. 2060 to remove the restrictions on the number of facilities that a bank may have for drive-in or walkup services other than at the main bank building.

The commission recommends Senate Bill No. 2061 to allow the income tax credit for investment in venture capital corporations and the Myron G. Nelson Fund, Inc. to be claimed under the optional simplified method of computing the state income tax.

The commission recommends Senate Bill No. 2062 to allow tax credits for investments by banks, savings

and loan associations, trust companies, and insurance companies in venture capital corporations in the same manner as provided with respect to the Myron G. Nelson Fund.

The commission recommends House Bill No. 1048 to remove the sales and use tax for new manufacturing machinery and equipment purchases.

The commission recommends House Bill No. 1049 that provides for payment of a license fee in lieu of property taxes on leasehold interests and improvements on state-owned property when used for tourism or concession purposes.

The commission recommends Senate Concurrent Resolution No. 4003 to direct the Legislative Council to study the privatization of some state government services.

The commission recommends Senate Concurrent Resolution No. 4004 directing the Legislative Council to study, analyze, and evaluate, with the assistance of a consultant, public policy as determined by the Legislative Assembly and its relationship to the state's ability to enhance economic development.

TOURISM AND NATURAL RESOURCE ENHANCEMENT STUDY

Background

The legislative history for the study of the state's bountiful natural resources and outdoor recreation activities indicates concerns with economic development, tourism, and maintaining the quality of outdoor recreational experiences for North Dakota citizens, particularly a concern that the quality of the state's resources would be diminished to a point at which the economic activity associated with hunting, fishing, camping, and nature appreciation may begin to decline.

Travel and tourism in the state constitutes a diverse industry that annually brings millions of dollars into the state economy through spending, increased numbers of jobs, and tax revenues. Travel and tourism is affected by a number of factors, including such things as weather, gasoline prices, age of the traveling population, and the dates of public events. It is an industry made up of a great range of businesses and enterprises from the visitor information centers to the state's major attractions, and from the person who rents a cabin to a hunter or angler to the owners of large hotels. Within the last several years, travel and tourism has been perceived as an important means of economic stability for a state, such as North Dakota, which is heavily influenced by and vulnerable to the economic declines experienced by the energy and agricultural sectors.

The importance of travel-generated employment in North Dakota is highlighted by the fact that this type of employment, according to the United States Travel Data Center, ranks as the second largest industry in North Dakota behind only the health services industry as compared to all other private (nongovernment), nonagricultural industries within the state.

Tourism Master Plan Proposal and Contract

State efforts to enhance tourism and the state's natural resources and outdoor recreation opportunities are provided by various public agencies and

private groups and organizations, including the Tourism Promotion Division of the Economic Development Commission.

The establishment of the Tourism Promotion Division of the Economic Development Commission stems from a statutory duty of the director of the Economic Development Commission under North Dakota Century Code (NDCC) Section 54-34-06 to "[p]lan, execute, and direct a program of publicity . . . [and] research . . . to [f]oster and promote tourism . . ." The mission of tourism promotion is to create new wealth for North Dakotans by utilizing a targeted marketing effort to attract out-of-state and in-state visitors. The 1989 work plan for the Tourism Promotion Division included (1) an expanded research program to develop a data base research capability allowing the Tourism Promotion Division access to detailed information concerning the economic impact of tourism in the state on a quarterly basis, profiles and characteristics of travelers to and through the state, travel trends, market research, and visitation data at major attractions and (2) completion of a tourism master plan.

The Jobs Development Commission joined with the Tourism Promotion Division to hire a consultant for the development of a tourism master plan and for the performance of related research. A consortium of tourism specialists known as International Tourism and Resort Advisors was selected to prepare the master plan and related research. The work involved three components:

1. The formulation of information on who is visiting the state and why, and what state residents are doing insofar as visitations in the state and outside the state.
2. An analysis of the economic effects tourism and recreation experiences have on the state, including employment generated by tourism.
3. The development of a master plan for tourism and natural resource development in the state, including a five-year action plan, a monitoring tool to measure what affect the state's tourism effects are having in the state, and insight into how the state can invest in the tourism industry to get the maximum returns from its investments.

Tourism - Profile of Travelers

International Tourism and Resort Advisors first provided the commission with a profile of travelers in the state and described the economic impact of travel throughout the state. Three basic markets were examined by International Tourism and Resort Advisors—visitors from other states, Canadian visitors, and state residents traveling in the state. A survey of the markets was conducted through questionnaires mailed to individuals as identified by the state's own inquiry list and supplemented by other data bases obtained from the private sector.

With respect to visitors from other states, the survey revealed that approximately 26 percent reside in Minnesota, while much lower percentages reside in various other states. More than 75 percent traveled to the state by private automobile or recreation vehicle, while 14.5 percent arrived by air service. Traveling for pleasure or a vacation comprises the

most common purpose for visits to the state by visitors from other states (45 percent), while visiting friends or relatives and just passing through comprised approximately 35 percent. With respect to accommodations, approximately 70 percent of the visitors from other states stay in a hotel or motel, while 22 percent stay with friends or relatives, 21 percent stay at campgrounds, and 1.4 percent stay at bed and breakfast facilities. The age of the visitors from other states varies; however, approximately two-thirds do not have children at home and are, in fact, empty nesters with discretionary income and the time to travel. Visitors from other states enjoy more passive activities such as sightseeing, visiting museums or historic sites, and shopping while the more active activities are generally rated lower. Personal knowledge, state information, friends or relatives, the automobile club, chamber of commerce, or convention and visitor bureaus were listed as primary sources of trip planning information, while television and radio advertisements resulted in only four percent of the responses to the survey. Some of the results of the survey results may be skewed because of the mailing lists used to identify survey participants.

With respect to Canadian visitors to the state, more than 95 percent arrived by private automobile or recreational vehicle. Canadians overwhelmingly visit the state for the purpose of vacation or pleasure (83.8 percent) while a minimal number of visitors are passing through or staying with friends or relatives. Most Canadian visitors (93.7 percent) stay at hotels or motels while very few stay at campgrounds or with friends or relatives. Canadian visitors are younger than their domestic visitor counterparts and only one-third of the Canadian visitors have no children at home. The primary activities of Canadian visitors are relaxing or sightseeing, going to a restaurant or club for entertainment, swimming in a pool, and shopping. The primary trip planning information source for Canadian visitors is personal knowledge which indicates that a high number of Canadians are repeat visitors.

The average number of overnight trips by state residents is generally greater for those residents with higher incomes. Over 95 percent of travel by state residents is undertaken by private automobile or recreational vehicle. The primary purposes of resident in-state travel are for pleasure, vacation, or visiting friends or relatives. State residents stay primarily at hotels or motels with friends or relatives or in campgrounds. With respect to state residents' travel-related activities, the residents' first response was visiting friends or relatives, followed by city shopping; relaxing or sightseeing; visiting a restaurant or club; visiting a museum or historic site; attending a fair, festival, or rodeo; picnicking; or other activities.

Visitors from other states rate the following vacation characteristics as the most important to them in visiting the state—friendly local people; national parks and scenic areas; a clean, quiet environment; moderately priced lodging; and museums and historic sites. Suggestions on how to add to or improve the state as a destination vacation indicated little dissatisfaction in that 24 percent of the respondents

suggested no change was necessary while other respondents included providing more information and advertising and Sunday opening.

Canadians identified the most important vacation characteristics as moderately priced lodging, friendly local people, clean and quiet environment, shopping, and fine restaurants. Suggestions by Canadian visitors for adding to or improving North Dakota tourism included Sunday opening, sales tax refunds, and more information and advertising.

In the order of importance, North Dakota residents' suggestions are Sunday opening, water recreation, more information and advertising, more cultural events, more hiking and camping opportunities, and more destination resorts.

The total economic impact of tourism in North Dakota for 1988 consisted of \$565 million in direct impact and \$435 million in indirect and air travel impacts. The direct impact consisted of \$211 million in retail sales, \$197 million in food and beverage sales, \$66 million in lodging, \$48 million in ground transport, and \$43 million in recreation. Indirect impact consisted of secondary and induced purchases by businesses and households that receive the direct expenditures of travelers in North Dakota, plus the associated payroll, employment, and tax receipts. Twelve thousand jobs were directly attributed to the tourism industry in the state which generated an annual payroll of \$95 million. The state and local tax receipts derived from this activity amount to almost \$30 million. Two million visitors traveled to North Dakota in 1988. Visitors from other states spent an average of \$150 per day and stayed an average of 4.2 days; and Canadian visitors spent an average of \$232 per day and stayed an average of 2.6 days.

International Tourism and Resort Advisors suggested that opportunities for expanding the state's tourism markets include passthrough travelers; repeat visitors; shopping and meeting travelers; water recreation; full vacations; cultural-related activities, including the Native American cultures, visitors from Iowa and Nebraska, and some specialized marketing in Minnesota.

Master Plan Recommendations

The International Tourism and Resort Advisors plan included a summary of the state's physical attributes and facilities and a discussion of opportunities and priorities associated with the visitor industry. The plan included specific and extensive recommendations relating to systems approach for touring vacations, state parks upgrading and concessions, historic and native crafts exhibits, historic preservation, bed and breakfast facilities, specific community projects, a resident awareness program, a vocational education program, a state tourism policy, a tourism department, a tourism advisory board, an industry trade association, a marketing approach and priorities, promotional funding, a travel barometer report, a visitor profile report, special purpose evaluation studies, evaluations of effectiveness of promotion, evaluations of tourism infrastructure, and funding generally.

Commission Considerations

Testimony before the commission emphasized several conclusions drawn by the International Tourism and Resort Advisors report, which are (1) the importance of Canadian travelers and (2) the effect of the low water levels in North Dakota lakes on tourism.

A representative of the Corps of Engineers explained the long-term master manual used by the Corps of Engineers for regulation of the Missouri River main stem system. The part of the master plan that describes multipurpose regulation indicates that first, flood control will be provided; second, all irrigation and other upstream uses for beneficial consumptive purposes during each year will be allowed; third, downstream water supply and water quality requirements will be provided; fourth, the remaining water supply available will be regulated in such a manner that the outflow from the reservoir system at Gavins Point provides for equitable service to navigation and power; fifth, by adjustment of releases from the reservoirs above Gavins Point, the sufficient generation of power to meet the area's needs will be provided; and finally, sixth, insofar as possible without severe interference with the foregoing functions, the reservoirs will be operated for maximum benefit to recreation and fish and wildlife.

The Governor expressed extreme frustration with obtaining appropriations for the Garrison Diversion Project and with the Corps of Engineers in dealing with the declining water levels on Lake Sakakawea and Lake Oahe. The master plan adopted 45 years ago does not recognize the development of a substantial recreation industry or recognition of a decline in the navigation industry nor does the manual recognize the fact that the basin states have been given little recompense for their sacrifices. Although the Corps of Engineers has agreed to review the manual, the Governor was pessimistic about the likelihood for change.

A representative of the Corps of Engineers suggested that efforts for development on Lake Sakakawea should concentrate on improving the existing areas surrounding the large number of access points to the lake, rather than concentrating on other areas of the lake, to provide more destination sites that attract people and keep those people in the state. More cooperation is needed between the local, state, tribal, and federal governments and private developers to put together feasible projects that are based on potential growth and recreation demands.

Notwithstanding commission members' suggestions concerning the importance of allowing the use of townhouse or time share concepts to the lake's development, the Corps of Engineers' representative indicated it was unlikely such a concept would be allowed by the corps in the foreseeable future.

The commission toured Fort Abraham Lincoln State Park, Cross Ranch State Park, and Lake Sakakawea State Park, and heard presentations in Stanton concerning the Knife River Indian Village National Historic Site located north of Stanton, and in Riverdale concerning the city's plan to become a major regional recreation center. Throughout the tour the commission members heard about plans for

development and problems, both for the public and private entities, relating to that development.

The commission generally reviewed the recommendations in the International Tourism and Resort Advisors report; heard testimony concerning the plan recommendations from representatives of the State Historical Board, Game and Fish Department, North Dakota Council on the Arts, North Dakota State University Extension Service, and North Dakota Humanities Council; and selected several other recommendations for further study.

Tourism Department, State Tourism Policy, and Grant Programs

International Tourism and Resort Advisors recommended creation of a tourism department, creation of a tourism advisory board within that department, and a mechanism for a grant program for tourism promotion, education, and development.

The commission considered a bill draft that required the Governor to appoint a director of tourism to supervise and control a state department of tourism for the purpose of fostering and promoting tourism to, and within, the state and full development of the state's tourism resources, and to serve as a planning and coordinating agency for tourism-related programs of the state and the state's political subdivisions. A tourism advisory board would be established to advise the Governor regarding the promotion and development of tourism in the state, provide a forum for developing interagency goals for visitor attractions and services, coordinate the operating programs of state agencies, and perform other duties. The director of the department would also perform numerous duties, including implementing the state's tourism policy, preparing and updating annually a tourism master plan, measuring and forecasting visitor volume, receipts, and related social and economic impacts; working with private sector and local, state, and federal agencies to develop the state's tourism-related infrastructure, facilities, services, and attractions; organizing and coordinating programs designed to promote tourism to, and within, the state; participating in travel shows; supervising and administering visitor information centers; developing opportunities for professional and technical education training in the visitor industry; fostering an understanding among the state's residents of the economic importance to the state of hospitality and tourism; providing advice and technical assistance to the local, public, and private tourism organizations; and monitoring the policies and programs of state agencies that significantly affect the visitor industry.

As an alternative to creation of a separate department of tourism, the commission also considered a consolidation of the State Historical Society, the Parks and Recreation Department, and the Tourism Promotion Division of the Economic Development Commission.

Commission members concluded that the proposed department of tourism is perhaps the most significant recommendation made by International Tourism and Resort Advisors and worthy of the commission's consideration particularly in the light of the economic impacts generated by the visitor

industry. Although a consolidated agency may work, commission members decided that a department of tourism would generate the focus and accountability for the tourism-related functions of the state and perhaps eliminate some of the confusion that now exists between state efforts to promote tourism and foster economic development. Members also concluded that the Parks and Recreation Department has many preservation mandates and responsibilities that may tend to be overlooked in an agency designed to promote tourism. If a tendency towards overdeveloping at the expense of cultural resources developed, a combined agency would be in a difficult position.

The commission considered a bill draft that adopted a state tourism policy as a guide to the growth of the state's tourism sector. The commission concluded that the proposed policy provides for an integrated approach to tourism—one that crosses agency lines to encourage or require cooperation between agencies performing related functions.

The commission considered a bill draft that established a matching grant program for tourism promotion and development in the state to be administered by the department of tourism. The bill draft involved two components. First, grants were provided for tourism promotion and development to cities, nonprofit corporations, or local nonprofit civic, fraternal, or service organizations in a state which could not exceed 75 percent of the entire amount of the actual expenditures for a proposed program or project that the director of tourism would determine as consistent with the state tourism policy and would promote or develop visitor travel to, or within, the state, including the promotion of tourism-related attractions and activities; construction, improvement, or operation of visitor destination facilities and tourist attractions; development and preservation of attractions of historical, contemporary, recreational, or cultural interest; or the conduction of tourism seminars and training programs. Second, grants could be made for the purpose of assisting entrepreneurs in developing or improving tourism products or services in the state in an amount not exceeding 50 percent of the actual expenditures associated in the development or improvement of the tourism product or service that the director determines is consistent with the state tourism policy and will promote or develop visitor travel to, or within, the state.

Although some concerns were expressed about establishing an economic development type grant program administered by the department of tourism rather than by the Bank of North Dakota, commission members determined it was important to have such a program to send a significant signal to the visitor industry of the state's commitment to tourism. It was also determined that the grant program should include park districts and board of county park commissioners.

Bed and Breakfast Facilities

International Tourism and Resort Advisors recommended that the definition for a bed and breakfast facility be revised to allow up to six bedroom units, that the innkeeper's liability be limited to demonstrated negligence, and that county and city

governments be encouraged to permit bed and breakfast facilities that meet state law without further restrictions.

The commission considered a bill draft that revised the definition of bed and breakfast facilities to allow up to six lodging units, removed the limit on the number of persons per night, limited the liability of the operator of the bed and breakfast facility, and prohibited a political subdivision from imposing health and safety, licensure, or inspection requirements that exceed state requirements.

A representative of the hospitality association testified that the hotel and motel industry, particularly smaller hotels, motels, and restaurants in smaller communities in the state would oppose this kind of expansion of the concept of bed and breakfast facilities because of the unfair competition that would result, including unfairness in the application of the immunity provision of the bill draft.

Concern was also expressed by others testifying that the average home would not have adequate bathroom facilities or hot water for six rooms, that some boardinghouses, motels, or hotel facilities could relicense as bed and breakfast facilities, and that a local government should have the right to impose stricter standards if it so desires.

Commission members concluded that the definition of bed and breakfast facilities should be changed to allow a maximum of four units to address the concerns of the industry and the immunity section should be deleted because most or all facilities would carry insurance anyway with the result that the insurance company would be protected and not the facility, the required insurance costs are not that high, and it may be detrimental to a facility if the public became aware that a facility had no insurance.

Sunday Opening

International Tourism and Resort Advisors suggested if Sunday opening were allowed an additional \$18 million in annual tax revenues would be generated to help fund tourism development.

The commission considered a bill draft that repealed state law relating to the conduct of business on Sunday and created a requirement for one day of rest in seven.

A representative of the Greater North Dakota Association testified in favor of the bill draft and said that 65 percent of the population of North Dakota now favors the measure.

State Lodging Tax

International Tourism and Resort Advisors recommended the creation of a state lodging tax of one percent with the proceeds to be used for tourism promotion.

The commission considered a bill draft that provided that all sales tax revenues on lodging and accommodations collected under NDCC Chapter 57-39.2 would be placed in the state promotion fund and that appropriated \$8,900,000 from the fund to the department of tourism.

Although some commission members were concerned with creation of another dedicated fund, the members decided it was important to fund properly the newly created Department of Tourism and the use

of the lodging tax was a logical choice for obtaining those moneys.

Parks and Recreation Fees

International Tourism and Resort Advisors recommended an increase in park and recreation user fees to help fund tourism development. A representative of the Parks and Recreation Department summarized possible funding mechanisms for maintaining and developing the state's park systems.

The commission considered a bill draft that increased the annual permit fee on motor vehicles entering state parks and eliminated the free senior citizen entrance permits.

Commission members discussed the importance of maintaining the park system and that most regular users of the park system think the changes are appropriate.

Highway Signs

International Tourism and Resort Advisors recommended a statewide plan for touring vacations, with a statewide network of visitor service hubs and a continuous network of scenic roads. To facilitate the touring vacations, International Tourism and Resort Advisors recommended use of extensive signing on the state's highways. A representative of the Department of Transportation testified the department interprets state law to prohibit three types of signs—tourist-oriented directional signs, logo signs, and service plazas—allowed under federal law.

The commission considered a bill draft that required the Department of Transportation to establish rules for the erection and maintenance of tourist-oriented directional signs. The commission also considered a bill draft that would have required the Department of Transportation to establish franchise programs for the erection of logo signs on highway rights of way and to lease space within tourist information centers and rest areas.

The commission discussed the inadequate signage on the state's highways and the need for the signs to facilitate tourism.

A representative of the Department of Transportation testified in favor of the two bill drafts and explained that the department had initiated similar legislation in the past. A representative of the sign industry opposed the bill draft that established a franchise program for the erection of logo signs as being discriminatory against the smaller operations.

Historical Resources

International Tourism and Resort Advisors made numerous recommendations concerning the development of historical resources in the state. Upon request of the commission, the State Historical Board prepared a four-year plan for the development and maintenance of the state's historical sites with the appropriate priorities identified, including a proposed budget for the four-year plan. Commission members concluded the plan would be invaluable for determining future steps in the development of historical resources.

Recommendations

The commission recommends Senate Bill No. 2054 to establish a state department of tourism for the purpose of fostering and promoting tourism to, and within, the state and for full development of the state's tourism resources. The bill establishes a tourism advisory board for the purpose of advising the Governor regarding the promotion and development of tourism in the state.

The commission recommends Senate Bill No. 2055 to provide that all sales tax revenues on lodging accommodations collected under NDCC Chapter 57-39.2 would be placed in a tourism promotion fund and to appropriate \$8,900,000 from the fund for the department of tourism.

The commission recommends House Bill No. 1044 to adopt a state tourism policy that would serve to guide the growth of the state's tourism sector.

The commission recommends Senate Bill No. 2056 to establish a matching grant program for tourism promotion and development in the state. The bill includes an appropriation of \$375,000 for the program during the 1991-93 biennium.

The commission recommends House Bill No. 1045 to revise the definition of a bed and breakfast facility to allow four bedroom units and to place limitations on the county and city governments' authority to impose stricter health and safety, licensure, and inspection requirements on the bed and breakfast facilities.

The commission recommends House Bill No. 1046 to repeal state law relating to the conduct of business on Sunday and to provide for one day of rest in seven.

The commission recommends Senate Bill No. 2057 to increase the maximum annual permit fee on motor vehicles entering state parks to \$20 and to eliminate the free senior citizen entrance permits.

The commission recommends House Bill No. 1047 to require the Department of Transportation to establish rules for the erection and maintenance of tourist-oriented directional signs.

JUDICIARY COMMITTEE

The Judiciary Committee was assigned two studies. House Concurrent Resolution No. 3058 directed a study of the uses to which proceeds of charitable gaming are devoted and the laws governing charitable gaming. House Concurrent Resolution No. 3086 directed a study of charitable gaming laws and rules and the need to establish a permanent legislative overview committee for charitable gaming issues. The Legislative Council also delegated to the committee the responsibility to review uniform laws recommended to the Legislative Council by the State Commission on Uniform State Laws under North Dakota Century Code (NDCC) Section 54-35-02. The Legislative Council also assigned to the committee the responsibility for statutory revision.

Committee members were Representatives Wade Williams (Chairman), Jim Gerl, William E. Kretschmar, Jay Lindgren, Bob Martinson, Jeremy Nelson, Bill Oban, Jennifer Ring, Cathy Rydell, Allen Stenehjem, Dan Ulmer, Janet Wentz, Adella J. Williams and Senators Ray Holmberg, Jerry Meyer, and Wayne Stenehjem.

The report of the committee was submitted to the Legislative Council at the biennial meeting of the Council in November 1990. The report was adopted for submission to the 52nd Legislative Assembly.

CHARITABLE GAMING STUDIES

The goals of the two charitable gaming studies were to review the uses to which the proceeds of charitable gaming operations are directed in light of growing concern that some proceeds are not being devoted to educational, patriotic, fraternal, religious, or other public-spirited uses as required by Article XI, Section 25, of the Constitution of North Dakota; to conduct an in-depth, substantive review of all laws and rules governing charitable gaming; and to determine the desirability of establishing a permanent legislative committee to oversee gaming in the state in light of the substantial revenue generated by gaming operations.

Charitable Gaming - Early History

In the first legislative session after statehood (1889-90), an attempt was made to establish the Louisiana lottery, which was seeking a new home in light of the impending revocation of its charter in its state of origin. The operators of the lottery were willing to offer the state an initial payment of \$100,000, followed by annual payments of \$75,000, for the privilege of operating a lottery. The scandal and controversy following this attempt led to the state's first constitutional amendment. The amendment added what eventually became Article XI, Section 25, of the Constitution of North Dakota and outlawed all forms of lotteries and gift enterprises.

The constitutional prohibition was maintained until 1976, when it was amended to allow certain forms of charitable gaming. Under the provision, the Legislative Assembly is permitted to authorize bona fide nonprofit veterans', charitable, educational, religious, or fraternal organizations, civic and service

clubs, or such other public-spirited organizations as it may recognize, to conduct games of chance when the entire net proceeds of the games are devoted to educational, patriotic, fraternal, religious, or other public-spirited use.

Advent of Charitable Gaming

With the passage of the constitutional amendment in 1976, a temporary law was passed by the 1977 Legislative Assembly (1977 S.L., ch. 473), followed by another temporary law by the 1979 Legislative Assembly (1979 S.L., ch. 531), and finally legislation in 1981 which was codified as North Dakota Century Code (NDCC) Chapter 53-06.1. The 1987 Legislative Assembly enacted NDCC Chapter 53-06.2, allowing charitable organizations to conduct parimutuel horse racing.

Many changes have been made to the charitable gaming law during the seven legislative sessions since passage of the constitutional amendment. During the first three interims after passage of the law in 1981, Legislative Council interim committees studied charitable gambling and suggested many of the changes that have since been made. The changes have primarily affected the kinds of games that can be held, the kinds of organizations that can hold them, the allocation of expenses of conducting the games, administration of the charitable gaming law, enforcement of the charitable gaming law, and taxation of gaming proceeds.

Charitable Gaming Terminology

The terms commonly used in discussing charitable gaming activity have specific meanings, usually defined by statute. Gross proceeds are all moneys received by the charity from games of chance and admissions. For most games, this figure also represents the total risked by the bettors. Adjusted gross proceeds are gross proceeds minus the cash won by the bettors or (if prizes are awarded instead of money) the price of prizes. Adjusted gross proceeds is an important figure as it is used in determining tax rate and expense limits. Net proceeds are adjusted gross proceeds minus allowable expenses. This is the amount that is used by the charity for qualified charitable purposes.

Charitable Organizations

There are two critical elements specifically mentioned in the constitutional amendment allowing charitable gaming—the kinds of organizations that can conduct the games and the use that is made of the proceeds from the games. The constitutional provision requires that the charity be a "bona fide nonprofit veterans', charitable, educational, religious, or fraternal" organization, or a civic or service club, or a "public-spirited" organization authorized by the Legislative Assembly. The constitutional provision also requires that the net proceeds be used only for "educational, charitable, patriotic, fraternal, religious, or other public-spirited uses."

All organizations must meet the first test in order to conduct charitable gaming. Some of these organizations also meet the second test and thus can use the net proceeds for the organization's own purpose. The term "eligible organization" is used to generically describe all the kinds of organizations permitted to conduct games of chance. Most eligible organizations are required to have been in existence in this state for at least two years.

Games Permitted

Under the original 1977 law, the only games permitted were bingo, raffles, pull tabs, jars, and punchboards. The 1979 law added sports pools on professional sports. In 1981 charities were first permitted to conduct the game of twenty-one. In 1987 draw poker and stud poker were added. Also, in 1987 most charities were authorized to conduct horse racing under the parimutuel system. In 1989 offtrack parimutuel betting on horse races and the conducting of calcuttas were permitted.

Most of the games allowed in the law are described in rules adopted by the Attorney General. They are generally played the way similar games are played elsewhere. A number of statutory changes have been made in the rules applicable to most of the games. The rules of each game have been changed at least once.

Under the 1977 and 1979 laws, the only people permitted to conduct the games were members of the charitable organization. The 1981 law allowed employees of the eligible organization to operate the games. The Attorney General has adopted detailed rules governing the conduct of most games allowed under the law.

Another important issue in the context of charitable gaming is who is permitted to participate in the games—whether it is the general public or some smaller group. The 1977 and 1979 laws limited participation in games to members, their spouses, and bona fide guests. The 1981 law allowed the general public to play the games, and then only those run by Class B charities. Since 1983 participation in pull tabs, jars, punchboards, sports pools, and twenty-one has been limited to people at least 21 years old. Further, those games cannot be conducted when establishments serving alcoholic beverages are required to be closed. These restrictions apply even if the game site is not such a place.

Expense Limits

Probably the facet of charitable gaming law that has changed the most over the years is the computation of allowable expenses. It is important to the charities, as expenditures in excess of the allowable limits must be made up from other contributions the charity receives. It is important to recipients of net proceeds, as a higher expense limit means there will be less net proceeds available for distribution.

At least three issues have been addressed by the Legislative Assembly in the context of expense limits. One issue is the amount of the limit. A second issue is how often the limit is computed. For example, can a charity that exceeds the limit in one quarterly tax reporting period make up for that by coming under the limit in a different quarter? This issue is impor-

tant because of the seasonal variation of gaming revenue in the face of costs that are most constant and less cyclical. A third issue is exactly what things qualify for the expense deduction and what kind of detailed record must be maintained by the charity to account for the expenditures.

In the 1977 and 1979 laws expenses were limited to one-third of adjusted gross proceeds. Expenses were based on "each such occasion." The expenses were computed on a quarterly basis, on the basis of an administrative interpretation of the statutory reference to computing expenses on the basis of "each such occasion" as meaning each quarterly tax reporting period. Various items of allowable expenses were enumerated, and a deduction could not be taken for items not on the list. Specifically excluded from eligibility were overhead, capital costs, and general maintenance. Specifically included were purchases of gaming equipment, equipment repair, operating expenses (e.g., wages of jar ticket sellers), rent of a site or equipment, janitorial expenses if the site was not rented, accountants' fees, and license fees.

In 1981 the expense limit was raised to 35 percent of adjusted gross proceeds.

In 1983 two expense limits were established. For charities conducting games at more than one site, the limit was increased to 38 percent of adjusted gross proceeds. Also in 1983 a limit was established on rent payments for the game of twenty-one. Charities were limited to rent expenditures of \$150 per twenty-one table.

In 1985 the distinction between charities based on the number of sites was replaced. Instead, the limit for charities using net proceeds for their own use was increased to 40 percent of adjusted gross proceeds, while the limit for charities that did not use any of the net proceeds was increased to 45 percent of adjusted gross proceeds. Another change made in 1985 was the removal, for charities that did not use net proceeds for their own use, of the limitation on the allowable types of expenses. For the other charities, the list was supplemented by allowing up to \$200 per month in other overhead expenses. Finally, the quarterly expense computation period was changed to a full year.

In 1987 the 45 percent expense ceiling was extended to all charities. All restrictions on deductions—both the list of excluded items and the list of permitted items—were removed. Also in 1987 further changes were made to the rent limits. Sites where bingo is the primary game of chance conducted are not subject to any rent limits, in effect a continuation of prior law as it was silent on the subject and contained no limits. The \$150 per table limit for twenty-one rent was retained. For the first time, rent limits were established for jar bar sites. The limit is \$150 per month if twenty-one is not conducted there. For sites where twenty-one is conducted, the limit is \$50 per month plus whatever is allowed for twenty-one.

Administration of the Charitable Gaming Law

From the inception of charitable gaming, administration of the law has been the responsibility of the Attorney General and local officials. The phrase "licensing authority" has been used in each version of the law to refer to the Attorney General. The Attorney

General has served as the primary licensing authority since 1977, and local jurisdictions have had varying roles over the years.

Under both the 1977 and 1979 laws, charities maintaining their own buildings for use by members and also serving meals and liquor were licensed by the Attorney General, while other charities were required to secure approval from local officials to operate their games.

In 1981 the Attorney General was made the focal point for all requests to conduct charitable gaming. Local approval could still be obtained for raffle and bingo games in which the main prize did not exceed \$1,000 and for which the total of all prizes did not exceed \$2,000. However, even in the case of the smaller bingo and raffle games, charities were required to obtain necessary application forms from the Attorney General.

A two-tiered license system was established in 1981. Class A licenses were issued to charities maintaining a building for their own use and that served meals or liquor—in other words, the ones that had previously been the only ones required to obtain a license from the Attorney General. All other charities were granted Class B licenses. The Attorney General was granted authority to deny a Class B license to an applicant that also had an alcoholic beverage retail license. Effective in 1986, additional license classes were established. Class C licenses are issued to charities that conduct not more than two occasions per year, regardless of whether they have an alcoholic beverage license. The Attorney General is also required to establish by rule not more than two additional classes of license based on frequency of gaming, types of games, and adjusted gross proceeds.

Although most of the statutes and administrative rules deal with conducting or participating in games of chance, there is some regulation of the manufacturers and distributors of equipment particularly designed for games of chance.

Since the first law in 1977, distributors of gaming equipment have been required to obtain, for an annual \$1,000 fee, a license from the Attorney General; charities have been restricted to buying gaming equipment from licensed distributors; and distributors have also been prohibited from holding alcoholic beverage licenses. Likewise, manufacturers of gaming equipment have been required to obtain licenses on essentially the same conditions as distributors.

The rules applicable to manufacturers and distributors were changed in 1987 in response to problems with quality control of charitable gaming tickets and the possibility that manufacturers might be reluctant to supply equipment in North Dakota, some of which is rarely sold, if required to pay a \$1,000 license fee. Charitable gaming tickets manufacturers were the only manufacturers required to obtain a manufacturer's license and the fee was reduced to \$250. In 1989 manufacturers of both charitable gaming tickets and paper bingo cards were required to apply for annual license, the fee for which was increased to \$2,000. Manufacturers of all kinds of gaming equipment are permitted to sell equipment in North Dakota only through licensed distributors, for whom the license fee is \$1,500. The scope of the

manufacturers' licensing requirement was also narrowed by the 1987 legislation by excluding resident printers of raffle tickets from the definition. Finally, the rulemaking authority of the Attorney General was expanded to include quality standards for manufacture of charitable gaming tickets.

When licensing authority for Class B charities was transferred to the Attorney General, local authorities were given an effective veto power over the charities they formerly approved. This was because approval by the local officials "must accompany the license application to the attorney general." This requirement was extended to all charities effective in 1986. Consequently, local officials have a pivotal role in controlling charitable gaming, including the number and types of games. Even before the change in the law requiring Class B charities to obtain a license from the Attorney General, rules of that office granted extensive authority to local officials for the other charities. All license applications were required to obtain acknowledgment from the local police chief and to allow local law enforcement officers to enter the site to observe the games. Similar rules still apply.

Another area of significant local control is work permits. Since 1983 local jurisdictions have been permitted to require charitable gaming employees to obtain a local work permit.

Enforcement of the Charitable Gaming Law

Responsibility for enforcement of the charitable gaming law has been shared by the Attorney General and local officials since the 1977 law. Enforcement attention has been directed both at preventing crimes and at ensuring compliance with the many requirements of the law.

Primary difficulties encountered in preventing crimes are the volume of activity and subtlety of some of the cheating methods. The Attorney General has adopted extensive rules governing accounting procedure and auditing methods to increase opportunities to prevent and detect cheating by players or gaming personnel.

Taxation of Charitable Gaming Proceeds

A state tax has been imposed on the proceeds of charitable gaming since 1977. In the 1977 law, a tax of three percent of adjusted gross proceeds was established and allocated to the general fund of the state. The tax was part of the expense limit for the charity. The tax rate was increased to five percent in 1979 and was payable from adjusted gross proceeds (and not charged against the allowable expenses of the charity).

Local jurisdictions were first given a share of the tax revenue in 1983. The share amounted to two percent of adjusted gross proceeds, payable to the city in which the site was located, or to the county for sites outside city limits; use by local jurisdictions was limited to enforcing the charitable gaming law. That year also saw the advent of the graduated tax. After the first \$600,000 of adjusted gross proceeds, the tax increased to 20 percent of adjusted gross proceeds.

In 1989 the charitable gaming tax on adjusted gross proceeds of organizations was changed to a tax of five percent on the first \$200,000 of adjusted gross

proceeds per quarter, 10 percent on adjusted gross proceeds from \$200,000 to \$400,000 per quarter, 15 percent on adjusted gross proceeds from \$400,000 to \$600,000 per quarter, and 20 percent on adjusted gross proceeds in excess of \$600,000 per quarter. The allocation of games of chance tax revenue was changed from two-fifths of taxes collected within the city or county to a total of \$170,000 per quarter to be allocated among cities and counties in proportion to the adjusted gross proceeds within the jurisdiction compared to the total adjusted gross proceeds in the state. An excise tax was imposed on charitable gaming tickets at the rate of two percent of the gross receipts from sale of charitable gaming tickets to a final user.

1987 and 1989 Legislation

House Concurrent Resolution No. 3058 indicated that one goal of the study directed by that resolution would be to review the laws governing charitable gaming, with emphasis on charitable gaming laws enacted since 1987. The committee received and reviewed information summarizing 29 bills enacted since 1987 which primarily affected various aspects of the charitable gaming industry.

Testimony and Committee Considerations

The committee conducted several meetings, including a meeting in Fargo, at which the committee received testimony from a wide variety of individuals and organizations involved in charitable gaming in the state. The committee also received and reviewed extensive information submitted by the Attorney General with regard to all aspects of the charitable gaming industry. The committee's considerations centered upon seven issues—eligible uses of charitable gaming net proceeds; taxes affecting the charitable gaming industry; issues related to licensing; enforcement measures; legislative overview; the establishment of a state gaming commission; and social problems related to charitable gaming, such as compulsive gambling.

Eligible Uses

North Dakota Century Code Section 53-06.1-01(7) defines eligible uses of charitable gaming net proceeds. Within that provision are broad categories of identified eligible uses, such as uses benefiting an indefinite number of persons either by bringing them under the influence of education, cultural programs, or religion, or relieving them of disease, suffering, or constraint; uses increasing comprehensive and devotion to the principles upon which the nation was founded; and uses benefiting a definite number of persons suffering from a seriously disabling disease or injury causing severe loss of income or incurring extraordinary medical expense which is uncompensated by insurance.

Testimony expressed concern that charitable gaming net proceeds were not being dedicated to legitimate eligible uses; although contrary testimony indicated this concern was likely based not on the failure of charitable gaming organizations to comply with constitutional and statutory provisions governing eligible uses but, rather, on dissatisfaction with particular, discrete uses of charitable gaming

proceeds. Representatives of the Attorney General indicated that there is a need for more guidance with respect to what constitutes an eligible use of charitable gaming net proceeds. It was asserted that this guidance should come from the Legislative Assembly, the policymaking branch, rather than allowing decisions regarding eligible uses to be made exclusively by the regulating agency. The committee reviewed information submitted by the Attorney General which included a listing of recipients the office of the Attorney General is most comfortable with as being within the categories of recipients authorized by law to receive charitable gaming funds. Additionally, the committee received information from the Attorney General identifying those types of contributions about which the office of the Attorney General is unsure whether the contributions satisfy the statutory and constitutional requirements regarding eligible uses. The committee also reviewed copies of Schedule C - Record of Eligible Use Contributions (Quarter Ended June 30, 1989) submitted to the Attorney General's office by the top 20 Class A and Class B gaming organizations. Committee members expressed concern that in some instances it appeared that much of charitable gaming proceeds is not reaching those who need it, but rather is being used, for example, for salaries and office supplies. Representatives of several Class B charitable gaming organizations indicated that salaries of organization personnel sometimes are paid out of gaming net proceeds because personnel are trained and used at gaming sites to provide information and instruction regarding the organization's charitable endeavors.

Testimony indicated that one method of ensuring that charitable gaming net proceeds are used for appropriate eligible uses may be to identify categories of eligible uses or particular eligible uses to which a priority of distribution would be attached. Eligible organizations would then be required to distribute their net proceeds according to the assigned priority.

In the course of reviewing issues relating to eligible uses, the committee reviewed two bill drafts modifying current law governing eligible uses. The first bill draft would have established a descriptive listing of eligible use disbursements under each of the broad categories of eligible uses defined in NDCC Section 53-06.1-01(7). The bill draft also would have established a priority use or disbursement, on a percentage basis, of charitable gaming net proceeds. An eligible organization would have been required to use or disburse at least 70 percent, not more than 25 percent, and not more than five percent of its net proceeds for categories of uses identified in the bill draft as corresponding to the respective percentages. Information received in explanation of the bill draft indicated that the bill draft would affect some eligible organizations differently than others. For example, an organization that is exempt under Section 501(c)(3) of the Internal Revenue Code or an organization registered under North Dakota law as a charitable organization and which is allowed because of that status to use its net proceeds for its own benefit may have to give away at least 70 percent of its net proceeds if the uses benefiting the organiza-

tion do not fall within those categories of uses for which at least 70 percent of net proceeds must be used or disbursed. Testimony in support of the definitions and distribution priorities contemplated under the bill draft indicated that such a scheme would contribute greatly to ensuring that charitable gaming net proceeds are directed to those beneficiaries that most need the financial assistance. Testimony in opposition of the bill draft indicated that the distribution requirements would represent a dramatic shift in the structure of charitable gaming. Representatives of Class B charitable gaming organizations that are exempt under Section 501(c)(3) or are registered under North Dakota law as charitable organizations indicated that the distribution requirements would seriously damage if not cripple their organizations' activities. A committee consensus developed that establishing distribution priorities may not be the most effective or appropriate method of addressing issues related to eligible uses.

The second bill draft established a descriptive listing of eligible use disbursements under each of the broad categories of eligible uses defined in NDCC Section 53-06.1-01. Testimony in support of establishing a descriptive, but not exclusive, listing of eligible uses indicated that such a listing would provide guidance to the regulating agency with respect to which kinds of eligible uses are regarded as legitimate. A troublesome issue posed for the committee was whether the descriptive listing should, in fact, be exclusive or whether the listing should be regarded simply as examples of legitimate eligible uses. Concern was expressed that little would be accomplished if the listing were not exclusive and thereby, despite giving some direction, continuing to vest in the regulating agency considerable discretion with respect to what constitutes an eligible use. Testimony received from representatives of the Attorney General indicated that the bill draft, if ultimately enacted, would provide the framework within which the Attorney General would adopt rules governing eligible uses. Testimony indicated there would still be considerable latitude in identifying and allowing certain eligible uses simply because of the broad terminology with which eligible uses are defined under the bill draft and current law and because the descriptive listing contained in the bill draft would not be considered exclusive. It was noted that if the law is clear with respect to what is or is not an eligible use, legislative history should not be used to aid in the adoption of administrative rules. If, however, the law is unclear or ambiguous and assistance is needed in its interpretation, legislative history may be relied upon in the rulemaking process.

Taxes

The 1989 Legislative Assembly enacted two tax measures affecting charitable gaming that caused concern in the charitable gaming industry. House Bill No. 1030 imposed a sales tax on the sale of bingo cards, and Senate Bill No. 2455 imposed an excise tax on charitable gaming tickets at a rate of two percent on the gross receipts of sale or retail of charitable gaming tickets.

Testimony from various representatives of charitable gaming organizations indicated that the

taxes on bingo cards and charitable gaming tickets had substantially affected charitable gaming activities. It was indicated, particularly with respect to the sales tax applied to bingo cards, that many charitable organizations conducting bingo had attempted to pass the additional tax through to patrons and the result had been a reduction in the number of patrons for the organizations' gaming activities. A representative of one charitable gaming organization indicated that the impact of the sales tax on bingo had resulted in the closing of two bingo parlors operated by the organization. It was noted that for the quarter ending June 1989 the organization had paid approximately \$11,700 in taxes, but for the quarter ending September 1989 the organization had paid over \$85,000 in taxes. Additional testimony indicated that for some fraternal clubs with relatively small bingo operations the sales tax and other obligations related to the bingo operation resulted in some clubs losing money on their bingo operations. It was emphasized by several representatives of charitable gaming organizations that if charitable gaming is to continue to provide a source of revenue to charities and individuals in need, there must be some relief from the impact of the current tax structure.

In the course of considering issues related to the impact of recent tax legislation, the committee considered a bill draft that would have provided an exemption from the state sales tax for organizations that have gross proceeds of bingo games of less than \$50,000 for the calendar year. Information received by the committee indicated that approximately 123 organizations conducting bingo would have been affected by the exemption. The exemption from the sales tax would have resulted in an approximate decrease of \$256,000 in general fund revenues per biennium.

Certain games of chance are subject to a federal excise tax under Section 4401 of the Internal Revenue Code [26 U.S.C. § 4401]. The federal excise tax was enacted in 1951 and is one-quarter of one percent on total wagers. The affected games of chance are pull tabs, punchboards, raffles, and sports pools. Only gaming organizations whose gaming activities are open to the public are subject to the tax and an organization would be exempt from the tax if that organization's gaming activities are solely for the benefit of the organization's members and bona fide guests. Testimony indicated that a large number of charitable organizations in the state had received notices that the organizations had not paid the federal excise tax for several years and that the Internal Revenue Service would begin efforts to collect these unpaid taxes. Testimony from a representative of the Internal Revenue Service indicated that the decision by the Internal Revenue Service was to seek collection of back excise taxes beginning July 1, 1986. It was estimated that approximately 100 charitable organizations, with a total back excise tax liability of about \$500,000, would be required to file returns.

Testimony from representatives of affected charitable gaming organizations indicated that many organizations are not in a position to pay the back excise tax liability. Additionally, it was noted that many of these organizations were not aware of the

tax liability and had not been advised of the filing requirement by the Attorney General's office, even though the Attorney General's office apparently knew of the filing requirement. Testimony indicated there was a pressing need to provide some form of statutory relief for the affected charitable gaming organizations and for all charitable gaming organizations that are required to pay the federal excise tax in the future.

The committee considered a bill draft that would have allowed, as a vehicle for addressing future federal excise tax liability, gaming organizations to deduct the amount of the tax liability from the organization's charitable gaming gross proceeds. The bill draft would have addressed the issue of back federal excise tax liability by designating as an eligible use of gaming net proceeds the federal excise tax liability incurred or paid by eligible organizations for the period beginning January 1, 1986, and ending on July 1, 1991. Concern was expressed, however, that the designation, as an eligible use, of a federal tax liability may not comply with the eligible uses identified in the constitutional provisions and statutes governing charitable gaming. The committee also considered a bill draft that allowed charitable gaming organizations to deduct future federal excise tax liability from the organization's gross proceeds and that, notwithstanding current expense limitations and in addition to expenses allowed to be deducted from adjusted gross proceeds, allowed an eligible organization to deduct as an expense the federal excise taxes incurred or paid by the organization for the period beginning January 1, 1986, and ending on July 1, 1991.

Licensing

North Dakota Century Code Section 53-06.1-03(3) generally governs the licensure of eligible organizations to conduct games of chance. A Class A license is issued to an eligible organization licensed as a retail alcohol beverage dealer which maintains a building for the use of its members and guests. A Class B license is generally issued to other eligible organizations. Consequently, the governing distinction between a Class A and Class B licensee is that the Class A licensee holds a retail alcoholic beverage license and maintains a building.

Class A organizations, and some Class B organizations, are required to distribute all charitable gaming net proceeds to eligible beneficiaries, while most Class B organizations are allowed to keep those proceeds and expend them for the organization's own purposes. Testimony supported a change in the licensing structure to reflect the fundamental distinction between charitable gaming organizations, i.e., what they are allowed to do with charitable gaming net proceeds, rather than the artificial distinction of having a liquor license and maintaining a building. Testimony received from representatives of the Attorney General indicated that issuing licenses based upon what an organization is allowed to do with charitable gaming net proceeds would be easier to administer from the standpoint of handling tax returns and required reports.

Testimony also indicated that under present law if a Class A organization is found to have committed a

gaming violation and its charitable gaming license is suspended or revoked, there is the risk that the organization's retail alcoholic beverage license may be suspended or revoked as well. The result is that the organization's entire operation may be threatened. It was noted that if a Class B organization is found to have committed a gaming violation the organization loses its gaming license but can continue its operations. Testimony indicated that basic fairness dictates that a Class A organization should not be required to forfeit its retail alcoholic beverage license if it is found to have committed only a gaming violation. Committee members suggested there is a distinction between the two licenses and if both are to be suspended or revoked, there should be a violation that is closely related to gaming and liquor sales activities. Representatives of the Attorney General indicated opposition to any limitation on the authority of the Attorney General to suspend or revoke an organization's retail alcoholic beverage license if the organization is found to have committed a gaming violation. It was observed that an organization that commits gaming violations is condoning illegal activities and such an organization should not be licensed to conduct retail alcoholic beverage sales.

North Dakota Century Code Section 53-06.1-14(1) establishes a \$2,000 license fee for the manufacturer of charitable gaming tickets or the manufacturer of paper bingo cards. Testimony indicated that an ambiguity exists in this section which could result in the imposition of two separate license fees upon a manufacturer of both charitable gaming tickets and paper bingo cards.

Testimony indicated that the number of licensed manufacturers in the state, a majority of whom manufacture both charitable gaming tickets and paper bingo cards, has declined by one-third. It was suggested that if the present licensing provision were interpreted to require a "double" license fee for these manufacturers, more of the manufacturers may find it necessary to leave the state. Additional testimony indicated that a further reduction in the number of charitable gaming ticket and paper bingo card manufacturers in the state would result in less competition and higher prices for charitable gaming tickets and paper bingo cards. It was suggested that the statute be modified to clarify that a manufacturer of both charitable gaming tickets and bingo cards would be subject to a single \$2,000 license fee.

Enforcement - Tip Pooling

The committee was informed that the Attorney General had proposed an administrative rule for the game of twenty-one which would require twenty-one dealers to pool tips on a daily or weekly basis. The reason for the rule, it was asserted, was that there are indications that twenty-one dealers are stealing chips and redeeming them as tips. Pooling tips would create a controlled environment at the gaming site and, arguably, would deter dealers from engaging in such activity.

Testimony in opposition to the proposed rule indicated that it was a frivolous response to a problem the charitable gaming organizations can correct themselves if, in fact, there is such a problem. It was also noted that the rule would put a good, fast, effi-

cient, and friendly dealer on a par with a novice dealer in terms of receiving tips.

Committee members expressed skepticism and some frustration at the inability of representatives of the Attorney General to demonstrate convincingly the presence of a problem that would require the proposed rule. These misgivings were heightened by testimony from representatives of the Attorney General which indicated that the exact extent of the problem involving the stealing of chips is unknown and that, even when video cameras are used, it is questionable whether this type of activity can be detected.

Legislative Overview

Testimony indicated that the complexity of the charitable gaming industry and the volume of legislation affecting charitable gaming considered during recent legislative sessions underscores the need for some method of providing for sustained legislative overview of charitable gaming activities. Testimony further indicated there would be a benefit if legislation affecting charitable gaming were considered by a single committee in each house or by joint committee during each legislative session. In that manner, it was suggested, a clearer understanding of charitable gaming and the effects of legislation upon charitable gaming could be obtained as committee members developed a working familiarity with charitable gaming issues. Testimony also suggested the creation of an interim legislative committee to review charitable gaming activities and issues during the interims between legislative sessions. Concern was expressed, however, that the establishment of an interim committee alone would not address problems associated with the often fragmented consideration of charitable gaming legislation during a legislative session.

State Gaming Commission

The committee, during the course of reviewing how best to regulate charitable gaming activities in the state, considered a bill draft establishing a State Gaming Commission. The North Dakota Racing Commission would be replaced with a State Gaming Commission using the same format as that presently used for the Racing Commission. The State Gaming Commission would be charged with the responsibility of regulating charitable gaming activities, including ontrack and offtrack parimutuel horse racing. Testimony emphasized that parimutuel horse racing is a complex enterprise and its supervision requires particularized knowledge of horse racing. It was suggested that the Gaming Commission should have members who are familiar with and have expertise in horse racing or that the commission have a dual directorship—one director for gaming and one director for racing. Information presented to the committee indicated that approximately 12 states allow both horse racing and various forms of gambling. A review of selected state statutes indicated that the regulation of gambling and horse racing in the various states is divided between separate commissions or boards that independently regulate horse racing and gambling activities.

Compulsive Gambling

One of the more troublesome occurrences in environments in which gambling is available is the involvement or preoccupation of some individuals with gambling behavior that compromises or damages personal, family, or vocational pursuits. Testimony indicated that compulsive gambling is an emerging mental health problem and, while the true extent of its presence in North Dakota has not been adequately assessed, it is a problem that mental health organizations encounter frequently in offering assistance to clients. Testimony also indicated that there are no counselors in the state that are specifically trained for the counseling of compulsive gamblers, although such training is becoming more available. It was also noted that no charitable gaming funds are received to assist those few programs that are in place to assist compulsive gamblers.

The committee considered a bill draft that required the Department of Human Services to develop a demonstration program for the treatment and rehabilitation of compulsive gamblers. The program would be implemented in an area served by a regional human service center that is accessible to major population groups and determined by the department to be the most appropriate for purposes of identifying compulsive gamblers and providing treatment and rehabilitation services. The department would be able to enter into agreements with nonprofit organizations to assist in providing these services. The demonstration program would be funded by charitable gaming tax revenues. Testimony regarding the bill draft lauded the proposed legislation as a commendable first step toward addressing the complex problem of compulsive gambling. It was noted that given the pervasive presence of charitable gaming in the state, it is incumbent upon the Legislative Assembly to attempt to address the needs of those who become dependent, often at considerable risk to themselves and their families, upon charitable gaming.

Testimony received from a representative of the Department of Human Services indicated the cost of implementing the demonstration program for a two-year period would be approximately \$240,000.

Recommendations

The committee recommends House Bill No. 1050 to amend NDCC Section 53-06.1-01(7) to provide a descriptive listing of eligible uses under each broad category of eligible uses defined under that section.

The committee recommends Senate Bill No. 2063 to allow charitable gaming organizations to deduct federal gaming excise taxes from the organization's gross proceeds and to allow the organizations to treat as an additional expense federal excise taxes incurred or paid by the organization for the period beginning January 1, 1986, and ending on July 1, 1991.

The committee recommends House Bill No. 1051 to provide that a Class A license would be issued to an eligible organization that is prohibited from expending charitable gaming net proceeds for the organization's own purposes or benefits and is, therefore, required to disburse its net proceeds to an eligible beneficiary. A Class B license would be issued

to an eligible organization that is permitted to expend charitable gaming net proceeds for its own purposes and eligible uses. The bill also provides that an eligible organization that possesses a retail alcoholic beverage license could not have that license suspended, revoked, or denied simply because the organization is found to have committed a violation that results in the suspension or revocation of the organization's charitable gaming license.

The committee recommends House Bill No. 1052 to amend NDCC Section 53-06.1-14(1) to clarify that the manufacturer of both charitable gaming tickets and bingo cards is subject to a single \$2,000 license fee.

The committee recommends House Bill No. 1053 to provide that it is within the sole discretion of each charitable gaming licensee whether to require the pooling of tips received by twenty-one dealers.

The committee recommends Senate Bill No. 2064 to require the Legislative Council to appoint an interim committee that, in addition to any other responsibilities assigned to it by the Legislative Council, would review rules and laws governing charitable gaming to determine if those rules and laws are adequate or appropriate.

The committee recommends Senate Bill No. 2065 to establish a State Gaming Commission.

The committee recommends House Bill No. 1054 to require the Department of Human Services to develop a demonstration program for the treatment and rehabilitation of compulsive gamblers. The bill would be effective through June 30, 1993, and \$240,000 would be appropriated from charitable gaming tax revenues to the Department of Human Services for the purpose of implementing the demonstration program.

UNIFORM LAWS REVIEW

The North Dakota Commission on Uniform State Laws consists of eight members and is statutorily established by NDCC Section 54-55-01. The primary function of the commission is to represent North Dakota in the National Conference of Commissioners on Uniform State Laws. The national conference consists of representatives of all states and its purpose is to promote uniformity in state law on all subjects where uniformity is desirable and practicable and to serve state government by improving state laws for better interstate relationships. Under NDCC Sections 54-35-02 and 54-55-04, the state commission must submit its recommendations for enactment of uniform laws or proposed amendments to existing uniform laws to the Legislative Council for its review and recommendation during the interim between legislative sessions.

The state commission recommended seven uniform Acts to the Legislative Council for its review and recommendation. These Acts range from minor amendments to existing uniform Acts adopted in North Dakota to comprehensive legislation on subjects not covered by existing state law. The seven Acts were the Uniform Foreign-Money Claims Act; Uniform Statutory Rule Against Perpetuities; Non-probate Transfers on Death Act (1989); the optional repeal or revision of Uniform Commercial Code Article 6 - Bulk Transfers; Uniform Commercial Code

Article 3 - Negotiable Instruments; Uniform Commercial Code Article 4A - Funds Transfers; and proposed amendments to Uniform Commercial Code Article 1.

Uniform Foreign-Money Claims Act

The National Conference of Commissioners on Uniform State Laws approved the Uniform Foreign-Money Claims Act in August 1989. The Act was approved by the American Bar Association in February 1990. The Act is intended to facilitate uniform judicial determination of claims expressed in the money of foreign countries and requires judgments and arbitration awards in cases to be entered in the foreign money rather than in United States dollars.

The committee received and reviewed information summarizing the provisions of the Uniform Foreign-Money Claims Act. There was no testimony in opposition to the Act.

Uniform Statutory Rule Against Perpetuities

The National Conference of Commissioners on Uniform State Laws recommended the Uniform Statutory Rule Against Perpetuities to the various states for adoption in August 1986. The American Bar Association approved the uniform statutory rule in February 1987.

The committee received and reviewed information comparing NDCC Section 47-02-27 with the Uniform Statutory Rule Against Perpetuities.

In a recent case, *Nantt v. Puckett Energy Co.*, 382 N.W.2d 655, 661 (N.D. 1986), the North Dakota Supreme Court said:

A "second look" or "wait and see" doctrine [regarding the rule against perpetuities] has developed in modern times. . . . While this rule is still evolving and is not yet a prevailing rule, it is a basic common sense approach to "perpetuities" today. It is an alternative better than condemning modern commercial transactions for conflicting with ancient rules of property.

It is essentially this "wait and see" method that the national conference has recommended in the form of the Uniform Statutory Rule Against Perpetuities.

The Uniform Statutory Rule Against Perpetuities, introduced as House Bill No. 1450, was considered by the 1989 Legislative Assembly. The bill passed the House but failed to pass the Senate. After further study and modest changes the statutory rule was again recommended to the Legislative Council for its review and recommendation. Testimony in explanation of the Uniform Statutory Rule Against Perpetuities indicated that the rule would create a "wait and see" test based on a 90-year period for determining the validity or vesting of future interests in property. This test would replace the current rule that extinguishes or validates present interests on the basis of some possible future event.

Uniform Nonprobate Transfers on Death Act (1989)

The Uniform Probate Code, recommended to the various states by the National Conference of Commissioners on Uniform State Laws in 1969, was adopted in North Dakota in 1973 and is codified as

NDCC Title 30.1. Article VI of the Uniform Probate Code governs nonprobate transfers on death and is codified as NDCC Chapter 30.1-31. In August 1989 the National Conference of Commissioners on Uniform State Laws recommended the Nonprobate Transfers on Death Act (1989) to the various states for adoption. The 1989 Act is recommended by the national conference as a revision of and replacement for Uniform Probate Code Article VI. The 1989 Act retains or revises many of the provisions found in NDCC Chapter 30.1-31 and proposes several new sections. The 1989 Act, and NDCC Chapter 30.1-31, generally govern circumstances in which funds are deposited in a single-party or multiple-party account to be paid to a beneficiary upon a request that is in compliance with the terms of the account.

The committee received and reviewed information comparing NDCC Chapter 30.1-31 with the Nonprobate Transfers on Death Act (1989).

Testimony in explanation of the Nonprobate Transfers on Death Act (1989) indicated that it would update and expand existing law governing transfers on death. There was no testimony in opposition to the Act.

Amendments to Uniform Commercial Code - Article 1

The Uniform Commercial Code was adopted in North Dakota in 1965 and is codified as NDCC Title 41. Sections 1-201 and 1-207 of the Uniform Commercial Code are codified as NDCC Sections 41-01-11 and 41-01-17. In February 1990 the National Conference of Commissioners on Uniform State Laws recommended amendments to Sections 1-201 and 1-207, which govern general provisions and definitions for the Uniform Commercial Code and performance or acceptance made with a reservation of rights.

The committee received and reviewed information comparing North Dakota law with the proposed amendments to Uniform Commercial Code Article 1.

Testimony in explanation of the amendments to Uniform Commercial Code Article 1 indicated that the amendments would generally clarify definitions and conform existing provisions in the article to present commercial practices. There was no testimony in opposition to the amendments.

Uniform Commercial Code Article 3 - Negotiable Instruments

The National Conference of Commissioners on Uniform State Laws recommended the revised Article 3 - Negotiable Instruments to the various states for adoption in July 1990. The revised article is recommended by the national conference as a replacement for the present Article 3 and substantially rearranges the article, omits numerous provisions, and broadens or redefines the scope of numerous provisions.

The committee received and reviewed information comparing NDCC Chapter 41-03, with the revised Uniform Commercial Code Article 3 - Negotiable Instruments.

Testimony in support of the revision of Uniform Commercial Code, Article 3 - Negotiable Instruments indicated that the revision would substantially

revise and update existing law governing negotiable instruments and would clarify the status of certain negotiable instruments as well as clearly establish the rights and responsibilities of parties in transactions involving negotiable instruments. There was no testimony in opposition to the proposed revision of Uniform Commercial Code Article 3 - Negotiable Instruments.

Uniform Commercial Code Article 4A - Funds Transfers

The National Conference of Commissioners on Uniform State Laws approved the Uniform Commercial Code Article 4A - Funds Transfers in 1989. The American Bar Association approved the article in February 1990.

According to the article's prefatory note, there are a number of mechanisms for making payments through the banking system. One of these, commonly referred to as a "wholesale wire transfer" is the primary focus of Article 4A. A wholesale wire transfer generally involves the movement of large amounts of money through credits to accounts to complete a commercial transaction. There is no comprehensive body of law that defines the rights and obligations that arise from wire transfers, and Article 4A is intended to address this inadequacy.

The committee received and reviewed information summarizing the provisions of Uniform Commercial Code Article 4A - Funds Transfers.

Testimony in support of Article 4A indicated that the article would provide a much needed legal framework to govern wire transfers and would establish the rights and responsibilities of parties using wire transfers. Testimony indicated that an additional significant factor with respect to the adoption of the article is that the Federal Reserve has published for comment regulations that would apply Article 4A, with certain exceptions, to all transfers that cross Fedwire, which is the largest wire transfer system in the country. There was no testimony in opposition to the article.

Uniform Commercial Code, Article 6 - Bulk Transfers (Optional Repeal or Revision)

The National Conference of Commissioners on Uniform State Laws approved the optional repeal or revision of Uniform Commercial Code Article 6 - Bulk Transfers in August 1988. According to the national conference, changes in the business and legal context in which bulk sales are conducted have made regulation of bulk sales unnecessary. Therefore, the national conference has withdrawn its support for Article 6 of the Uniform Commercial Code and encourages that the article be repealed or, in the alternative, revised for those states that may wish to continue to regulate bulk sales.

The committee received and reviewed information comparing NDCC Chapter 41-06 with the optional repeal or revision of Uniform Commercial Code Article 6 - Bulk Transfers.

Testimony in support of the repeal of Uniform Commercial Code Article 6 indicated that the article has become a technical trap that results in major impediments to bona fide commercial transactions.

Testimony in explanation of the proposed revision of the article indicated that the revisions would significantly expand the article's scope and would, therefore, further complicate the manner in which commercial transactions are conducted. There was no testimony in support of revision of the article.

Recommendations

The committee recommends adoption of the Uniform Foreign-Money Claims Act. The Act would encourage uniform judicial determination of claims expressed in the money of foreign countries.

The committee recommends adoption of the Uniform Statutory Rule Against Perpetuities. The statutory rule would lend certainty to the manner in which the validity of future interests in property is determined.

The committee recommends adoption of the Uniform Nonprobate Transfers on Death Act (1989). The Act would replace and update existing law governing transfers on death.

The committee recommends adoption of the amendments to Uniform Commercial Code Article 1. The amendments clarify definitions and conform existing provisions to present commercial practices.

The committee recommends adoption of the Uniform Commercial Code Article 3 - Negotiable Instruments. The article substantially revises and updates existing law governing negotiable instruments.

The committee recommends adoption of the Uniform Commercial Code Article 4A - Funds Transfers. The article would establish the rights and responsibilities of parties using wire transfers and would provide the legal framework to govern such transfers.

The committee recommends the repeal of Uniform Commercial Code Article 6 - Bulk Transfers. The article has become an impediment to efficient commercial transactions and changes in the business and legal context in which bulk sales are conducted have made regulation of bulk sales unnecessary.

STATUTORY REVISION

Attachment Procedures - Recommendation

In a recent decision, Garrison Memorial Hospital v. Rayer, 453 N.W.2d 787 (N.D. 1990), the North Dakota Supreme Court declared unconstitutional NDCC Chapter 32-08.1. This chapter governs the circumstances and manner in which a creditor may seek prejudgment attachment of the property of a debtor. The court found the chapter constitutionally deficient for the following reasons:

1. The chapter allows the issuance of a writ of attachment based upon conclusory allegations of a debt more than \$50 and that the defendant/debtor is about to move from the county without giving security for the debt.
2. The chapter does not require the plaintiff/creditor to make a showing of the nature and amount of claim or to demonstrate probable cause for issuance of the writ to a judge exercising judicial discretion to minimize improvident issuance of the writ of attachment.
3. The chapter does not require the plaintiff/creditor to show there is any reason why

summary issuance of the writ of attachment is necessary to "avoid removal, destruction, or concealment of the property or loss of the plaintiff/creditor's proprietary interests" or that there are any other extraordinary situations requiring special protection of a state or creditor interest.

4. There is no provision entitling the defendant/debtor to an immediate or prompt full hearing after issuance of the writ at which the plaintiff/creditor must prove the underlying debt or its amount or probable cause for issuance of the writ.
5. The defendant/debtor's moving from one county to another without giving security for the alleged debt is not among the "truly unusual" or "extraordinary situations" requiring special protection to a creditor's interest and justifying *ex parte* issuance of a prejudgment writ of attachment.

The committee recommends Senate Bill No. 2066 to allow, prior to a hearing, the prejudgment attachment by a creditor of a debtor's property if the creditor establishes the basis and amount of the claim against the debtor and demonstrates the existence of extraordinary circumstances justifying the prehearing attachment. The bill clarifies the debtor's right to a hearing within 14 days after the writ of attachment is issued and places the burden of proving the conditions for issuance of the prehearing writ of attachment on the creditor.

Tax Credits for Residents of Dissolved and Annexed School Districts - Recommendation

North Dakota Century Code Section 15-27.4-03 provides in part that, upon dissolution of a school district, the unobligated cash balance in excess of \$10,000 which is not designated for indebtedness of a dissolved school district is a credit for the residents of the dissolved school district against taxes levied by the district to which the dissolved school district is attached in years following dissolution.

In Opinion 90-02, dated January 10, 1990, the Attorney General considered whether the tax credit provided for in NDCC Section 15-27.4-03 applies against the real estate taxes levied on all real property within a school district or only on property that is owned by residents of the school district. The Attorney General noted that a statute that allows a benefit to a resident and denies it to a nonresident based solely on residency is generally unconstitutional. After reviewing the legislative history surrounding the enactment of Section 15-27.4-03, the Attorney General concluded that the Legislative Assembly did not intend that the tax credit be available only to residents of a school district; rather, the tax credit would be available to anyone who owned property within the school district regardless of residency.

Testimony indicated that there may be a similar problem with NDCC Section 15-27.2-04(6), which provides a tax credit for residents of school districts following annexation.

The committee recommends Senate Bill No. 2067 to amend NDCC Sections 15-27.4-03 and 15-27.2-04(6) to provide that tax credits under those provisions are available to those who own property in

the dissolved or annexed school district rather than to only those who are residents of the affected district.

Technical Corrections - Recommendation

The committee recommends Senate Bill No. 2068 to make technical corrections throughout the Century Code. The bill would eliminate inaccurate or obsolete name and statutory references or superfluous language. The following table lists the sections affected and describes the reasons for the change:

<u>Section</u>	<u>Reason for Change</u>
4-14.1-02(5)	The reference corrects an incorrect reference change.
6-09.9-07	The reference to 6-09.9-06 is deleted because Section 6-09.9-06 was repealed by S.L. 1989, Chapter 117, Section 4, and S.L. 1989, Chapter 110, Section 11.
10-04-08	The insertion completes the statutory reference.
12.1-20-16	The reference change corrects an incorrect statutory reference.
15-03-04.3	The reference to Section 6-09-26.1 is deleted because Section 6-09-26.1 was repealed by S.L. 1989, Chapter 110, Section 11. Reference to Section 6-09-26 is inserted because the execution requirements were added to that section.
23-09.3-01	The reference change corrects an incorrect statutory reference.
23-18.2-02(1)	The reference to Section 50-18-01 is deleted because Chapter 50-18, relating to boarding homes for the aged and infirm, was repealed by S.L. 1989, Chapter 317, Section 14. Reference to Section 23-09.3-01 was inserted as Chapter 23-09.3, created by S.L. 1989, Chapter 317, provides for basic care facility licensing.
23-21.1-03	The specific date the chapter was effective enhances the reader's understanding of the section's application.
24-01-01.1	Senate Bill No. 2243 (1989) replaced the Highway Commissioner with the director of the Department of Transportation. This change allows the use of the term director in NDCC Title 24 without repeating the complete title of the director.
25-04-08.1	The words "of the person" are superfluous.
26.1-03-17(2)	Chapter 26.1-38 was repealed by S.L. 1989, Chapter 373, Section 2, and replaced by Chapter 26.1-38.1.
26.1-15.1-02	The reference change corrects an incorrect statutory reference.
26.1-38.1-11(2)	The reference change corrects an incorrect statutory reference.
26.1-40-02(1)	The reference change corrects an incorrect statutory reference.
26.1-42-01	Chapter 26.1-38 was repealed by S.L. 1989, Chapter 373, Section 2, and replaced by Chapter 26.1-38.1.
27-05.1-06	The specific date the chapter was effective enhances the reader's understanding of the section's application.
27-09.1-05(1)	The specific date the chapter was effective enhances the reader's understanding of the section's application.
30.1-01-06(48)	The reference to Section 54-23-27 is deleted because Sections 54-23-27 and 54-23-28 were repealed by S.L. 1989, Chapter 156, Section 54.
43-31-07	This change makes the clauses of subsection 3 consistent.
47-18-05.1(2)	Chapter 40-50 was repealed by S.L. 1987, Chapter 501, Section 20, and replaced by Chapter 40-50.1.
47-30.1-20(2)	The reference change corrects an incorrect statutory reference.
47-30.1-37(1)	Subsection 2 of Section 47-30.1-29 was removed from 1985 Senate Bill No. 2178, as introduced, during the 1985 legislative session. This change removes that reference in this section.
50-11.1-04(6)	House Bill No. 1293 (1985) changed all references to "supplemental parental care" to "early childhood services" in Chapter 50-11.1. House Bill No. 1354 (1985) created the new language in subsection 6 and the language "supplemental parental care" was used. This change would make the language consistent.
50-26-01	This change reflects the name originally intended in 1989 House Bill No. 1205 and currently used for this committee.
50-26-03	This change reflects the name originally intended in 1989 House Bill No. 1205 and currently used for this committee.
51-13-03	The reference changes incorrect statutory references.
53-06.1-06(8)	The reference change corrects an incorrect statutory reference.
54-07-01.2(1)	Section 6-09.1-02 was repealed by S.L. 1989, Chapter 110, Section 11, and replaced by Section 6-09-02.1.
57-62-02(1)	The reference change corrects an incorrect statutory reference.
65-01-02(6)	S.L. 1989, Chapter 295, replaced the commissioners with a director as the head of the bureau.
65-05-29(3)	The reference change corrects an incorrect statutory reference.
65-05.1-03	Section 65-05.1-05 was repealed by S.L. 1989, Chapter 771, Section 6.

LEGISLATIVE AUDIT AND FISCAL REVIEW COMMITTEE

The Legislative Council by law appoints a Legislative Audit and Fiscal Review Committee as a division of its Budget Section. The committee was created “[f]or 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” (North Dakota Century Code (NDCC) Section 54-35-02.1)

In setting forth the committee’s specific duties and functions the Legislative Assembly said “[i]t is 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.” (NDCC Section 54-35-02.2)

The Lieutenant Governor by law serves as chairman of the Legislative Audit and Fiscal Review Committee. In addition to Lt. Governor Lloyd Omdahl, other committee members were Representatives Wesley R. Belter, Odell Flaagan, Gereld F. Gerntholz, Richard Kloubec, Theodore A. Lang, Mike Timm, Dick Tokach, and Gerry L. Wilkie and Senators Duane Mutch, Pete Naaden, David O’Connell, Bryce Streibel, and Harvey D. Tallackson.

The report of the committee was submitted to the Legislative Council at the biennial meeting of the Council in November 1990. The report was adopted for submission to the 52nd Legislative Assembly.

During the 1989-90 interim, the State Auditor and independent accounting firms presented 109 audit reports. An additional 72 audit reports were filed with the committee but were not formally presented. The committee’s policy is to hear only audits of major agencies and audit reports containing major recommendations; however, an audit not formally presented could be heard at the request of committee members.

The committee also had the following duties and responsibilities:

- Receive and review annual reports of the status of accounts receivable at the State Hospital and the State Developmental Center at Grafton.
- Monitor fine revenues deposited in the common schools trust fund.
- Receive the audit reports of corporations receiving ethanol alcohol or methanol production subsidies.
- Contract for the audit of the State Auditor’s office.

STATE AUDITOR Audit of the State Auditor’s Office

North Dakota Century Code Section 54-10-04 requires the Legislative Assembly to provide for an audit of the State Auditor’s office. The Legislative Council contracted with Eide Helmeke and Company, Certified Public Accountants, for an audit of the State Auditor’s office for the two-year period ending June 30, 1989. The firm presented its audit report at the committee’s October 1989 meeting. The report stated the State Auditor’s office has implemented recommendations included in prior reviews. The audit report also stated the State Auditor’s office audits were generally found to be performed in an efficient and effective manner. The report recommends the State Auditor’s office implement the following:

- Internal control and compliance reports should be reviewed to ensure they address both financial statement audits and single audits. When reviewing internal control procedures, a checklist should be carried forward rather than reviewing the entire internal control system in a subsequent audit.

Suggested Guidelines for Performing Audits of State Agencies

In previous bienniums the Legislative Audit and Fiscal Review Committee adopted guidelines for auditors performing audits of state agencies. During the 1989-90 interim, the committee reaffirmed that audits are to be in compliance with these guidelines. The guidelines as revised by the committee require that the auditor in the audit reports is to make specific statements regarding:

1. Whether expenditures were made in accordance with legislative appropriations and other state fiscal requirements and restrictions.
2. Whether revenues were accounted for properly.
3. Whether financial controls and procedures are adequate.
4. Whether the system of internal control was adequate and functioning effectively.
5. Whether financial records and reports reconciled with those of state fiscal offices.
6. Whether there was compliance with the statutes, laws, and rules under which the agency was created and is functioning.
7. Whether there was evidence of fraud or dishonesty.
8. Whether there were indications of lack of efficiency in financial operations and management of the agency.
9. Whether actions have been taken by agency officials with respect to findings and recommendations set forth in the audit reports for preceding periods.

10. Whether all activities of the agency were encompassed within appropriations of specific amounts.
11. Whether the agency or institution has implemented the statewide accounting and management information system including the cost allocation system.

State Labor Department's Procedures for Processing Claims

The committee asked for and received reports from the State Auditor's office on the Labor Department's procedures for processing claims including recommendations for improving the Labor Department's procedures. The committee received from the Labor Commissioner written responses on how the Labor Department had implemented the State Auditor's office recommendations for improving procedures for processing claims.

The recommendations contained in the State Auditor's office reports to improve the Labor Department's procedures for processing claims are as follows:

1. Formally document management policies and procedures in an office manual for the various stages of processing claims, including deadlines.
2. Implement procedures to help assure that claims are processed in a more timely manner.
3. The Labor Commissioner reduce his personal involvement in processing claims.
4. Adopt a policy whereby claims are referred to the Attorney General's office within 45 days of the decision by the hearing officer if payment has not been received or if the employer is uncooperative.
5. Formulate a policy which clearly establishes the scope of the department's jurisdiction over labor disputes.
6. Post information in a control log on a timely basis.
7. Exercise care when posting data to the control log to ensure the log is accurate.
8. Implement procedures whereby management periodically reviews the control log and notes any unusual cases and investigates them to ensure all cases are being processed in an efficient and timely manner.
9. Properly document procedures surrounding all aspects of the processing of claims, including factfinding conferences as well as decisions on claims by the hearing officers or the Labor Commissioner. In addition, both involved parties should be notified of the decision in a timely manner.

The committee also asked for and received a report prepared by the Attorney General's office of a criminal investigation of the Labor Commissioner. The report states "there is no basis for criminal charges against the Labor Commissioner, but the Labor Commissioner's office has serious problems and the workers of this state are not being served well."

Auditing Procedures Regarding the Comprehensive Annual Financial Report

Committee Review

The State of North Dakota's first Comprehensive Annual Financial Report is for the fiscal year ended June 30, 1989, and the first audited Comprehensive Annual Financial Report will be for the fiscal year ended June 30, 1991. The Office of Management and Budget prepares the Comprehensive Annual Financial Report and the Comprehensive Annual Financial Report is to be audited by the State Auditor. The committee received information regarding auditing procedures needed for a Comprehensive Annual Financial Report including procedures followed by other states that have implemented statewide comprehensive annual financial reports. When auditing the Comprehensive Annual Financial Report other states conduct tests of revenue and expenditures through their central accounting systems. In those states where the Comprehensive Annual Financial Report statements are audited, additional auditing relating to individual agencies varies from no additional audit-related work to complete financial audits and performance or compliance reviews.

The committee found that testing of all state agency revenues and expenditures should be completed during the Comprehensive Annual Financial Report audit. Further auditing of individual agencies may vary as determined by the State Auditor or Legislative Audit and Fiscal Review Committee. The individual agency audits, if any further work is required, could be a performance review, compliance audit, or a financial audit.

The State Auditor reported that in order to complete in a timely manner the first audit of the Comprehensive Annual Financial Report additional staff and private firm audits are necessary. The additional staff and private firm audits are necessary in order to have all state agency financial audits completed for the year ended June 30, 1990, the beginning date for audits under the new system. Normally some of these audits would not have been completed until a much later date. To meet this one-time work demand, since it is the goal to have all prior audits completed before the audit report of the Comprehensive Annual Financial Report can be released, the State Auditor transferred the political subdivision audit staff to the agency audit staff, requiring political subdivisions to contract with private firms to perform political subdivision audits. This resulted in a reduction of general fund revenues to the extent the staff would have charged for audits of political subdivisions. Also, in response to the one-time workload the following audits will be conducted by private accounting firms:

- Department of Human Services.
- Department of Transportation.
- Highway Patrol.
- Game and Fish Department.
- Workers Compensation Bureau.
- Dickinson State University.
- Bismarck State College.

The State Auditor asked that the Legislative Assembly create a State Auditor political subdivision operating account. The State Auditor indicated that

if the State Auditor's office is not provided the authority to deposit audit fees collected for political subdivision audits in an operating account to use for the auditing costs or if the State Auditor's office general fund appropriation is not increased, political subdivisions will need to hire private firms to complete their audits. It was reported to the committee that the advantages for retaining the political subdivisions audit division are as follows:

1. To ensure a high quality of audits for local governments.
2. To maintain reasonable costs for an audit.
3. To continue providing an audit service for fraud, abuse, and illegal acts.
4. To provide assistance to local governments, private firms, and other state agencies.

Recommendations

The committee recommends Senate Bill No. 2069 that provides for the following:

- The State Auditor's office to audit the general purpose financial statements and review the material included in the Comprehensive Annual Financial Report.
- The State Auditor to determine the contents of the audits and reviews of state agencies.
- The State Auditor to charge an agency in the executive branch of government the contract amount to pay for an audit and the creation of a State Auditor operating account to use the moneys received by the State Auditor's office to pay for the audit.
- The State Auditor to supervise and pay for any audit contracted for by executive branch state agencies.
- The State Auditor to perform or provide for performance audits of state agencies as the State Auditor or the Legislative Audit and Fiscal Review Committee determines necessary.

The committee recommends that the State Auditor's office collect the amount from agencies necessary to pay private accounting firms for their audits of state agencies. This gives the State Auditor's office more control over the audits and should result in more uniform audits. The committee also recommends performance auditing be provided for by law. Since the Comprehensive Annual Financial Report audit will be in lieu of most other financial auditing, more time should be available for performance reviews. The performance reviews are to include reviewing elements of compliance, economy and efficiency, and program results. Although performance reviews have been recommended by prior committees, including a resolution passed by the 1971 Legislative Assembly, the State Auditor's office has not had the resources to conduct them.

The committee also recommends Senate Bill No. 2070 providing that the State Auditor's audits of political subdivisions be funded within the limits of legislative appropriations from a State Auditor's office operating account with the amounts charged for the audits of political subdivisions being deposited in this account.

1989-91 Deficiency Appropriation

The committee also considered a bill draft that would have provided the State Auditor with a \$66,000 deficiency appropriation for the State Auditor's office to be used during the 1989-91 biennium. The deficiency appropriation became unnecessary since \$190,000 was provided to the State Auditor's office from the budget stabilization fund and since the State Auditor's office general fund spending authority was increased by \$69,475 in August 1990 due to revised revenue estimates.

Accreditation Program

The committee considered the development of an accreditation program for auditors performing governmental audits but did not recommend the program since the State Auditor has the authority to establish standards and guidelines for governmental audits.

University of North Dakota Accounts Receivable

The University of North Dakota's June 30, 1989, audit report balance sheet included the unrestricted accounts receivable as one amount. The receivables included the general University of North Dakota's accounts receivable and the Rehabilitation Hospital's accounts receivable.

The committee asked that the University of North Dakota's future audited balance sheets include for the unrestricted current funds a note to the financial statements that includes information separating the Rehabilitation Hospital's net accounts receivable and allowance for doubtful accounts amounts from the other University of North Dakota's accounts receivable amounts.

FINE REVENUES

The Legislative Council assigned the committee the responsibility during the 1989-90 interim to monitor fine revenues. The Constitution of North Dakota requires the net proceeds of fines imposed for violation of state laws to be used for maintenance of the common schools. Fine revenues submitted to the state totaled \$1,035,116 during calendar year 1988.

The State Auditor's office performs audit tests where appropriate to determine if the state tuition fund is receiving all the funds due it. If the State Auditor's office determines that moneys have not been appropriately transferred to the state tuition fund it refers the problem to the Attorney General's office for its action. During this biennium, the Attorney General notified the counties where moneys were due the state tuition fund. All counties made the necessary payments.

The committee asked that the State Auditor's office while performing audits of political subdivisions to conduct, where appropriate, audit tests to determine if the state tuition fund is receiving all the funds it should and report the audit findings to the committee.

STATEWIDE ACCOUNTING AND MANAGEMENT INFORMATION SYSTEM

Beginning during the 1979-80 interim, the Legislative Audit and Fiscal Review Committee monitored the changes in implementation of the Statewide Accounting and Management Information System. The Statewide Accounting and Management Information System began operations at the beginning of the 1987-88 interim. The committee received progress reports regarding the development of the system. The system has been enhanced with a number of on-line accounting systems which enable agencies to input data without filling out paper forms. It was reported that the Statewide Accounting and Management Information System has a subsystem that has been designed to provide assistance in preparing the Comprehensive Annual Financial Report in accordance with generally accepted accounting principles.

The committee reaffirmed its prior goals that the necessary action should be taken by the Office of Management and Budget to have a statewide accounting and management information system that provides for annual comprehensive statements that include fixed asset records, investment records, in-

ventory records, and an on-line system for the transmittal of financial data from the Bank of North Dakota, Mill and Elevator Association, Job Service North Dakota, and the Higher Education System. The committee also asks that the State Auditor report in audit reports whether an agency or institution has fully implemented the system including the cost allocation system. The committee also recommends that the Comprehensive Annual Financial Report be audited by the State Auditor.

**OTHER ACTION
Accounts Receivable**

North Dakota Century Code Sections 25-04-17 and 50-06.3-08 require that the State Hospital and State Developmental Center present a detailed report to the Legislative Audit and Fiscal Review Committee on the status of accounts receivable for each fiscal year.

The committee accepted detailed reports on the amount of the accounts receivable written off during the 1989-90 interim. The amounts are as follows:

Fiscal Year	State Hospital	State Developmental Center	Human Service Centers	Total
1989	\$3,804,537	\$ 0	\$ 41,867	\$ 3,846,404
1990	2,978,261	1,580,609	27,725	4,586,595
Prior to fiscal year 1990 and not previously written off		67,069,958	192,986	67,262,944

State of North Dakota Outstanding Indebtedness

North Dakota Century Code Section 54-10-01 requires the State Auditor to prepare annually a report identifying all outstanding bonds and other evidences of indebtedness of the state of North

Dakota. The committee received the State Auditor's office North Dakota outstanding indebtedness reports as of June 30, 1988, 1989, and 1990. The following is the state's total outstanding indebtedness as of:

Date	Pledged Full Faith and Credit of the State	Without the Pledged Full Faith and Credit of the State	Total
June 30, 1988	\$67,479,312	\$709,797,953	\$777,277,265
June 30, 1989	64,751,722	921,726,308	986,478,030
June 30, 1990	61,958,547	871,020,636	932,979,183

Receipt of Alchem, Ltd., and Cenex Agrifuels Audit Reports

North Dakota Century Code Section 10-23-03.2 requires the Legislative Audit and Fiscal Review Committee to receive the audit reports from any corporation that produces agricultural ethyl alcohol or methanol and that receives a production subsidy from the state. Alchem, Ltd., and Cenex Agrifuels are ethanol production facilities located in North Dakota, which receive a subsidy from the state. The committee received the Alchem, Ltd., December 31, 1988 and 1989, and the Farmers Union Central Exchange, Inc.,

September 30, 1988 and 1989 audit reports at its November 1990 meeting.

Workers Compensation Fund

The committee received a status report on the financial condition of the workers compensation fund. The workers compensation fund had net losses of \$25.9 million for fiscal year 1988, \$33 million for fiscal year 1989, and \$59.6 million for fiscal year 1990. The workers compensation fund equity was \$14.5 million as of June 30, 1988, a negative \$18.6 million as of June 30, 1989, and a negative

\$78.2 million as of June 30, 1990. It was reported that although the Workers Compensation Bureau increased its premium rates by an average of 60 percent beginning July 1, 1989, and 35 percent as of July 1, 1990, it is still necessary to have greater rate increases and implement cost containment measures to reverse the present net losses.

Special Fund Spending Authority

In reviewing audit reports it was noted that various state department audit reports included a recommendation to comply with Article X, Section 12, of the Constitution of North Dakota which requires all public moneys to be paid out and disbursed only pursuant to an appropriation first made by the Legislative Assembly. The committee received information on alternatives to continuing appropriations to provide state departments authority to spend unanticipated funds, while still complying with the Constitution of North Dakota.

The committee recommends to the 1991 Legislative Assembly and its Appropriations Committees that the Emergency Commission receive a special fund appropriation for use by agencies to spend unanticipated collections.

Student Loan Trust Audit Report

The committee reviewed the student loan trust June 30, 1989, audit report. The student loan trust fund balance was \$43.1 million as of June 30, 1989. The committee suggested that future audit reports should clarify possible uses of the fund balance.

Other Reports

The Superintendent of Public Instruction and the State Health Officer reported on the development and distribution of the comprehensive health curriculum guidelines. Since the voters referred the mandatory comprehensive health education program in the December 1989 ballot, the committee asked for information regarding the 1989-91 expenses for developing and distributing health curriculum guidelines.

The State Tax Commissioner reported the status of administrative hearings related to outstanding corporation tax assessments and the director of the Office of Management and Budget reported the factors that led to the greater than estimated July 1, 1989, state general fund balance.

The committee made no recommendations regarding these reports.

LEGISLATIVE MANAGEMENT COMMITTEE

The Legislative Council delegated to the Legislative Management Committee the authority of the Legislative Council under North Dakota Century Code (NDCC) Section 54-35-11 to make necessary arrangements to facilitate the proper convening and operation of the Legislative Assembly. Legislative rules are also reviewed and updated under this authority. The Legislative Council also directed the committee to review the constitutional requirements governing amendments to bills. The committee was assigned House Concurrent Resolution No. 3027, which directed a study of the legislative process with emphasis on the appropriate use of the 80 natural days allowed for the Legislative Assembly to be in session; House Concurrent Resolution No. 3081, which directed a study of legislative employee compensation; and Senate Concurrent Resolution No. 4025, which directed a study of the state of the law with respect to legislative apportionment. The Legislative Council also assigned to the committee the responsibility for providing the Census Bureau with legislative apportionment information requirements for 1990 census tracts. The Legislative Council delegated to the committee the responsibility for administering 1985 Session Laws, Chapter 77; 1987 Session Laws, Chapter 29; and 1989 Session Laws, Chapter 25 (appropriations for improvements to the legislative wing of the State Capitol). The Legislative Council also delegated to the committee the power and duty of the Legislative Council under NDCC Section 54-35-02 to control the use of the legislative chambers and permanent displays in Memorial Hall.

Committee members were Senators William S. Heigaard (Chairman), Rick Maixner, Corliss Mushik, David E. Nething, John M. Olson, Harvey D. Tallackson, and Art Todd and Representatives Ronald A. Anderson, Roy Hausauer, Tish Kelly, Richard Kloubec, William E. Kretschmar, Charles F. Mertens, Jim Peterson, John Schneider, and Scott B. Stofferahn.

The report of the committee was submitted to the Legislative Council at the biennial meeting of the Council in November 1990. The report was adopted for submission to the 52nd Legislative Assembly.

LEGISLATIVE RULES

The committee continued its tradition of reviewing and updating legislative rules. The committee distributed a 1989 legislative process questionnaire to all legislators. The survey asked specific questions on legislative procedures and also requested comments on how to improve the legislative process. The results of the survey are referred to throughout this report.

Duties of President and President Pro Tempore

Under the legislative rules and by statute, the President of the Senate and Speaker of the House, while the Legislative Assembly is in session, are to sign all vouchers for the payment of money out of the appropriation for the Legislative Assembly. The committee reviewed a suggestion of the Lieutenant

Governor (who is President of the Senate) that this procedure be changed to transfer this responsibility from the presiding officers to employees. Because of the involvement of legislators and the review of their vouchers, it was determined that someone other than an employee should sign the vouchers. The committee determined that the Speaker of the House could continue with this responsibility, but the Lieutenant Governor is busy with duties in addition to those of presiding officer. The committee recommends amendment of Senate Rules 201 and 202 to provide that the President Pro Tempore, rather than the President, is to sign all vouchers for payment of money out of the appropriation for the Legislative Assembly while the Legislative Assembly is in session. The Speaker of the House would continue to sign vouchers under House Rule 201.

Senate and House Calendars

The committee reviewed several proposals to revise the contents of the Senate and House calendars. These proposals are specifically described in the section of this report entitled "Session Arrangements." The committee reviewed a proposal to shift the responsibility for preparing the calendars from the Legislative Council staff to the desk forces. Since computerization of the Senate and House calendars was approved by the Legislative Procedure and Arrangements Committee during the 1981-82 interim, the Legislative Council staff has prepared the calendars through its computer system. The calendar preparation system is being revised so one person, probably a page, could prepare the calendars on a part-time basis during the floor session. The committee recommends amendment of Senate and House Rules 203 to provide that the Secretary of the Senate and Chief Clerk of the House, respectively, are to prepare the daily calendars to reflect the action taken and pending on all measures and are to provide for the distribution of the completed calendars.

Senate and House Journals

The committee reviewed several proposals to shorten the contents of the Senate and House journals. These proposals are specifically described in the section of this report entitled "Session Arrangements." The committee reviewed a proposal to reduce the cost of the 1991 permanent journals. Under the proposal, daily journals would be printed on a better grade of paper; legislators who want a set of journals would have to save their daily journals received during the session; the contract printer would set aside the required number of sets of daily journals for binding as permanent journals after the session adjourns; at the end of the session, the contract printer would be provided with camera-ready masters for the journal index; the index would contain all revisions and corrections to the journal, i.e., the "permanent" journals would not be reprinted so as to include revisions and corrections; and the indexes would be distributed to legislators and to those who receive the bound, permanent journals. The committee recom-

mends amendment of Senate and House Rules 204 to reduce the number of permanent journals from 267 to 30, with the distribution of the 30 journals as provided in the rules.

Legislative Guests

As a result of comments by legislators in response to the legislative process survey, committee members discussed various methods of limiting legislative guests on the floor of each chamber. The various methods included designating an area in each balcony for guests, limiting seating in the front row of the balcony to guests, designating an area behind the rail in each chamber for guests, and limiting the area behind the rail to guests with legislative passes. The committee recommends amendment of Senate and House Rules 205 to provide that the sergeant-at-arms is to clear legislative guests, except for former members of the Legislative Assembly who have passes, from the floor of each chamber 30 minutes before the Senate or House convenes and through the time when the Senate or House recesses for that calendar day. The sergeant-at-arms is also to clear a designated area of the balcony of all persons, except legislative guests who have passes, during a daily session.

Clincher Motion

The committee reviewed the vote requirements for passage of a clincher motion. Under Senate and House Rules 315(1)(h) a question for which another vote is not required by the constitution or another rule requires a majority vote of the members present and voting. Under Senate and House Rules 341(2) a motion to reconsider requires a majority vote of the members-elect, but a motion to reconsider adoption of an amendment requires a majority vote of the members present. Discussions concerning imposition of a requirement that a clincher motion require approval by more than a majority of the members present revolved around the fact that a clincher motion imposes a two-thirds vote requirement and should require approval by more than a majority of the members present, even though a clincher motion is intended to speed action. The committee recommends creation of a new subdivision to Senate and House Rules 315(2), relating to the listing of motions requiring a vote by a majority of the members-elect, and amendment of Senate and House Rules 342, to provide that a clincher motion must be approved by a majority of the members-elect.

Division of Questions

The committee reviewed whether division of committee reports should be allowed and the procedure for handling a member's request for division of a bill. The committee determined the procedure for handling the division of a question should be specified by rule. During discussions of the procedural requirements for division of a question, committee members discussed the current provision that a request to divide the question on passage of a measure has the same effect as proposing an amendment, and thus requires only a majority vote of the members present for adoption. The committee determined the division of a bill, where portions of the bill require a two-thirds vote of the members-elect for final passage, e.g., those

portions that were the subject of an initiated or referred measure that was approved by the electorate within seven years of passage of the bill, should require the same vote as if that portion of the bill were a separate bill. The committee recommends amendment of Senate and House Rules 316 and 603 to provide that each division of a divided question requires the same vote for adoption which the division would require if it stood alone, and after voting on all divisions, the approved divisions comprise the question before the house.

Legislative Deadlines

The committee discussed the impact of the Legislative Council's selection of Monday, January 7, 1991, as the date for the convening of the 52nd Legislative Assembly. Under the Constitution of North Dakota, the normal date for the session to convene would have been Tuesday, January 8, 1991. With the session starting on Monday rather than Tuesday, all deadlines in the legislative rules are affected. The committee was particularly concerned with the deadline for introduction of bills. Under current rules, the deadlines for introduction of bills are the ninth and 14th legislative days (Fridays, if the session begins on a Tuesday). Committee members discussed the problems that could surface if each deadline were a Friday, e.g., on Friday the Legislative Council staff could receive several bill draft requests that would be impossible to complete because the weekend is not available for drafting and preparing the requests for introduction.

As a result of comments by legislators in response to the legislative process survey, committee members discussed bill introduction deadline alternatives and bill introduction limitations. Committee members reviewed several methods to encourage earlier introduction of bills such as the imposition of a deadline for requesting bill drafts, the problem with lobbyists and others who at the last minute request legislators to introduce bills, the introduction of a substantial number of bills by individual legislators, the minimal use of prefiling by legislators, and the impact of requiring every bill to be prefiled.

The committee recommends amendment of Senate and House Rules 401, 402(1), and 403 to provide that bills and resolutions may be prefiled with the office of the Legislative Council after the organizational session adjourns but no later than the day before the convening of the regular session, no bill may be introduced after the 11th legislative day, and after the convening of the regular session no member other than the majority and minority leaders may introduce more than five bills as prime sponsor.

Bill Copies

The committee compared the Senate and House rules and discovered Senate and House Rules 404(1) require 11 copies of a bill and resolution to be filed for introduction, but Senate Rule 404(7) provides for distribution of 12 copies and House Rule 404(7) provides for the distribution of 13 copies. The committee recommends amendment of Senate and House Rules 404(1) and (7) to provide that 13 copies of bills and resolutions are to be filed for introduction and distribution and to replace references to the Legisla-

tive Procedure and Arrangements Committee with references to the Legislative Management Committee.

State and Federal Government and Human Services and Veterans Affairs Committees

As a result of comments by legislators in response to the legislative process survey, committee members reviewed the workloads of the Senate and House State and Federal Government Committees and the Human Services and Veterans Affairs Committees. The comments by survey respondents who were members of the House were that the Human Services and Veterans Affairs Committee should be a three-day committee and the State and Federal Government Committee should be a two-day committee. During the 1989 session the House State and Federal Government Committee heard 146 measures and the Senate State and Federal Government Committee heard 148 measures, while the House and Senate Human Services and Veterans Affairs Committees each heard 89 measures. Committee members were of the opinion that the number of measures referred to and heard by a committee is not the sole determining factor of the committee's workload, but the substance of the measures causes the workload and the issues assigned to the Human Services and Veterans Affairs Committees are controversial and complex. The committee recommends amendment of Senate and House Rules 501 to provide that the State and Federal Government Committees are to be two-day committees and the Human Services and Veterans Affairs Committees are to be three-day committees. In conjunction with this change, the number of members on each committee is changed to reflect the transposition of the two committees and the listing of procedural committees appointed in each house is updated to include the Arrangements for Committee Rooms, Inaugural Planning, and Photography Committees.

Joint Constitutional Revision Committee

The committee reviewed a suggestion that a specific meeting time for the Joint Constitutional Revision Committee be provided in the rules. Committee members discussed the problems in setting a meeting time for the Joint Constitutional Revision Committee which would conflict with afternoon meetings of the Committees on Appropriations. Also discussed was the practice during the 1989 session of setting aside Wednesday afternoons for meetings of the Joint Constitutional Revision Committee. Also discussed was the workload of the committee and whether constitutional amendments could be referred to the State and Federal Government Committees rather than the Joint Constitutional Revision Committee. The committee recommends amendment of Senate and House Rules 503 and 504 to provide that no member of the Appropriations Committees may serve on the Joint Constitutional Revision Committee and any committee that meets on Wednesday and which has a member who is also a member of the Joint Constitutional Revision Committee may not meet during the time the Joint Constitutional Revision Committee meets. The committee also recommends amendment of Joint Rule 303 to provide

that the Joint Constitutional Revision Committee is to meet on Wednesday of each week from 3:00 to 5:00 p.m., rather than from 8:00 to 9:30 a.m.

Meetings of Committee Chairmen

The committee reviewed a proposal to eliminate the requirement that the majority leader of each house call a weekly meeting of committee chairmen for the purpose of arranging the schedule of bills to be considered at committee hearings during the following week. The committee recommends repeal of Senate and House Rules 505 to eliminate the requirement that the majority leader call a weekly meeting of committee chairmen.

Notice of Hearings

The committee reviewed the requirement that on Wednesday of each week the chairman of a three-day committee is to deliver a schedule of the hearings for the following week and on Friday of each week the chairman of a two-day committee and the chairman of the Appropriations Committee are to deliver a schedule of the hearings for the following week. Committee hearing schedules are prepared Thursday night and unless notice is voluntarily provided before the Friday deadline, committee hearing schedules printed for distribution on Friday are incomplete. The committee reviewed suggested alternatives, ranging from publication of separate schedules beginning on Wednesday and concluding on Friday, to requiring schedules at least a week in advance of scheduled hearings. Much of the concern over Friday publication of hearing schedules was the fact that those schedules include hearings scheduled for Monday. The committee recommends amendment of Senate and House Rules 506 to provide on Thursday, rather than Friday, of each week the Appropriations Committee and the two-day committees are to deliver notice of their hearings for the following week.

Committee Reports

As a result of comments by legislators in response to the legislative process survey, the committee reviewed the types of reports which are allowed to be made by committees. The specific suggestions were that a committee should be able to adopt a report of amend without recommendation and a report of do not pass and refer to another committee. The committee discovered that during the 1989 legislative session the following types of reports were made, in addition to the five types of reports specifically allowed by rule: do pass and be rereferred to another committee; do not pass and be rereferred to another committee; be amended, do pass, and be rereferred to another committee; be amended, do not pass, and be rereferred to another committee; be amended and then be rereferred to another committee; be amended and then be rereferred to another committee without recommendation; and be rereferred to another committee without recommendation. The committee recommends amendment of Senate and House Rules 601 to provide that a report of a committee must provide for one or more of the following recommendations with respect to a bill or resolution: do pass; do not pass; be amended; be rereferred to

another committee; or be placed on the calendar without recommendation.

6th to 11th or 14th Order on Same Day

The committee reviewed a proposal to allow a measure to go from the sixth to the 11th order on the same day if time permits. The committee recommends amendment of Senate and House Rules 601(2) to allow on motion a measure to be placed on the calendar for second reading and final passage immediately after action is taken on an amendment to the measure.

Form and Style Requirements

The committee discovered the rules do not provide for approval of amendments as to form and style by the Legislative Council staff. Senate and House Rules 404 require bills and resolutions to be approved as to form and style by the Legislative Council staff. Under Senate and House Rules 405, any bill or resolution filed without a notation from the Legislative Council staff as to approval of form and style must be delivered to the Legislative Council office with a request for examination and approval as to form and style. Committee members determined that because the Legislative Council staff performs the engrossing and enrolling functions for the Legislative Assembly, and unofficially reviews committee reports containing amendments, there should be a requirement in the rules as to form and style approval of amendments, other than floor amendments. The committee recommends amendment of Senate and House Rules 601(2) to provide that a report for amendment must be approved as to form and style by the Legislative Council staff.

The committee discovered that even though the engrossing and enrolling functions have been performed by the Legislative Council staff beginning with the 1979 Legislative Assembly, the legislative rules do not provide any procedure for engrossing and enrolling bills. The committee recommends the amendment of Joint Rule 205 to provide that the Legislative Council is to engross and enroll bills and resolutions as requested by each house and the Legislative Council is to determine the form and style of engrossed and enrolled bills and resolutions.

Consent Calendar

The committee reviewed a proposal to allow amendments on sixth order to be placed on the consent calendar. Under current rules, the only items that may be placed on the consent calendar are uncontested bills, uncontested resolutions, and contested resolutions. During the 1989 legislative session, amendments on the sixth order were placed on the consent calendar at certain times. The committee recommends amendment of Senate and House Rules 301(10) and Joint Rules 206 and 207 to provide for the placement of uncontested amendments on the consent calendar.

Executive Agency and Supreme Court Bill Introduction

The committee reviewed a proposal that all bills from a state agency should be introduced in one

house. This proposal arose because of the introduction of appropriation bills in one house and substantive measures relating to those bills in the other house during the 1989 legislative session. The committee discovered if all bills introduced at the request of an agency were filed in one house, there could be a disproportionate workload in either the House or the Senate. Under current procedures, bills prefiled by agencies are assigned to either the House or the Senate on the basis of committee workload. The committee recommends as part of the prefiling procedure an agency be asked whether the measure relates to the agency's appropriation, and if so, an attempt be made to prefile that bill in the same house the appropriations measure is to be introduced.

During discussion of deadlines relating to the introduction of bills, committee members received information on the prefiling of bills by legislators and the impact the current rule requiring executive agencies and the Supreme Court to prefile bills has on the legislative process. Under current rules, executive agencies and the Supreme Court have until December 15 to file bills with the Legislative Council for introduction in the ensuing regular session of the Legislative Assembly. The committee recommends amendment of Joint Rule 208 and Senate and House Rules 402(2) to require each executive agency and the Supreme Court to file with the Legislative Council those bills they wish to have introduced no later than December 10, rather than December 15, before the ensuing regular session.

Reprinting of Amended Bills

The committee discovered there is a question of whether one house could reprint bills that originated in the other house. Senate and House Rules 330 provide a bill amended in the second house may be engrossed upon motion of the house having possession of the bill or on request of a leader. However, under Joint Rule 601, a bill or resolution amended by the first house may not be reprinted as amended on different colored paper unless ordered by the house of origin. The committee recommends amendment of Joint Rule 601 to provide a bill or resolution passed by one house may be reprinted as amended on different colored paper by either house.

Designated Smoking Areas

The 1987 Legislative Assembly enacted legislation substantially revising the no smoking law—North Dakota Century Code (NDCC) Sections 23-12-09 through 23-12-11. Before this legislation, smoking was prohibited in any public area that had been designated as a no smoking area. The legislation changed the concept in that smoking in a public area is permitted only in an area that has been designated as a smoking area, and NDCC Section 23-12-10 provides that smoking areas “must be designated by the proprietor or other person with general supervisory responsibility over the place of public assembly, except in a place in which smoking is prohibited by the state fire marshal, by other governing law, rule, or ordinance, or by corporate or private policy.” The 1987-88 interim Legislative Procedure and Arrangements Committee recommended Senate Bill No. 2066 to clarify that a proprietor of a public facility

need not designate a smoking area. That bill was defeated.

The committee reviewed a proposal to prohibit smoking in committee rooms. During consideration of this proposal, suggestions ranged from allowing each committee to decide if smoking by members only is to be permitted, prohibiting smoking during public hearings, and prohibiting smoking entirely. The committee reviewed an executive order of the Governor which restricted smoking to three designated areas in the Capitol as of May 1, 1990, and prohibited all smoking within the Capitol as of October 1, 1990. Because of the control over the legislative wing by the Legislative Council during the interim and the Legislative Assembly during the session, that order does not apply to areas in the Capitol used by the Legislative Assembly. Because there is no legislative rule prohibiting smoking in all public areas in the legislative wing, the chairman of the Legislative Council designated the west end of the ground floor of the legislative wing as a smoking area. The committee recommends creation of Joint Rule 804 to provide that the legislative study room on the first floor of the State Capitol is a designated smoking area and that one other area in the space used by the Legislative Assembly and which is accessible to the public must be designated a smoking area during a legislative session. The rule also provides that no other area used by the Legislative Assembly may be designated a smoking area. Because of this recommended joint rule, the committee recommends the repeal of House and Senate Rules 105, which prohibit smoking in the Senate and House chambers, and House Rule 511, which allows a committee to decide if smoking by members only is to be permitted in the committee's room.

Other Rules Proposals Considered

The committee reviewed several other proposed rules amendments. These included (1) amendment of Senate and House Rules 301 to provide for a new 18th order of business entitled "special business;" (2) amendment of Senate and House Rules 315(4)(g) and 321 to require a vote of two-thirds of the members-elect to amend, reconsider, or suspend a rule; (3) creation of Senate and House Rules 317.1 and amendment of Senate and House Rules 334 to require a recorded roll call vote to be taken whenever a vote of the members-elect is required and that on the 34th and after the 49th legislative days a vote of the members-elect may be taken by a voice vote unless a recorded roll call vote is otherwise required by another rule; (4) amendment of Senate and House Rules 332.1 to provide that after the 55th legislative day a clincher motion may be applied to one or more actions unless one-third of the members-elect object in which case the item subject to the objection would not be included in the clincher motion; (5) amendment of Senate and House Rules 340 to require a bill or resolution to be retained for one day after second reading unless a motion to reconsider has failed or a clincher motion has passed; (6) amendment of Senate and House Rules 342 to allow a clincher motion to be made only by a member who voted on the prevailing side of the issue; (7) amendment of Senate and House Rules 402(2) and 403 to remove the authority of the

Delayed Bills Committee to approve introduction of executive agency bills; (8) amendment of Joint Rule 301 to allow conference committees to make recommendations concerning any matter that is the subject of the bill or resolution in conference; and (9) amendment of Joint Rule 501(7) to provide that only a fiscal note that states or estimates a fiscal impact in dollar amounts or which states that no state agency has primary responsibility for compiling and maintaining the information necessary for the proper preparation of the fiscal note is to be read. After discussing the impact of the proposals on current procedures, the committee took no action on the proposals.

The committee also discussed the proper procedure for asking questions, and whether papers should be able to be read. Mason's Manual of Legislative Procedure provides that a question of another member is to be asked through the presiding officer, the presiding officer asks the particular member whether the member will yield to a question, the member indicates yes or no, and if the member consents the question may then be asked. Senate and House Rules 348 allow the objection to the reading of papers (the question is over how to determine whether the material was prepared by a legislator or by a third party). After discussing these items, the committee took no action on placing these procedures in the rules.

Reprinting of Rules Manual

The committee reviewed a proposal to reprint the rules and committee's handbook in-house as a cost savings measure. Under the proposal, the entire rules manual would be reprinted, with appropriate grammatical and style changes, colored pages to distinguish various sections of the rules manual, and a consolidated index. The committee determined that the rules manual should be reprinted and when reprinted the current size and binding of the rules book is preferred.

Recommended Bills

The committee recommends Senate Bill No. 2071 to amend NDCC Section 54-03-11 to provide that the President Pro Tempore of the Senate, rather than the President, and the Speaker of the House are to approve vouchers for payment of expenses of the Legislative Assembly during a legislative session. The bill would provide for statutory recognition of the procedure proposed by the rules amendment recommended by the committee.

The committee recommends Senate Bill No. 2072 to amend NDCC Section 54-03-12 and to repeal Section 54-03-13 to remove the statutory listing of the duties of the Secretary of the Senate and Chief Clerk of the House of Representatives and to provide that duties of those officers are those duties required of them by the rules of the Senate and the House of Representatives, as appropriate. The statutory listing of the duties of the Secretary of the Senate and Chief Clerk of the House and the list in Senate and House Rules 203 have never paralleled one another and the duties listed in NDCC Section 54-03-13 included in the recommended amendments to Senate and House Rules 203(11).

The committee recommends House Bill No. 1055 to amend NDCC Sections 46-02-04, 46-03-19, 46-04-17, and 54-09-02(10) to provide that the printing of legislative documents (which include bills, resolutions, and journals) are to be in accordance with the rules of the Senate and the House of the previous legislative session or as directed by the Legislative Council. Although specifications for the printing of legislative documents are included in legislative rules, the Legislative Council, through its Legislative Management Committee, reviews and establishes specifications for the upcoming Legislative Assembly which are not reflected in the rules of the preceding Legislative Assembly.

The committee recommends House Bill No. 1056 to repeal NDCC Chapter 54-04, relating to the procedure of engrossing and enrolling legislative bills and resolutions. Chapter 54-04 provides that a negotiating committee is to arrange for the engrossing and enrolling of bills unless the Legislative Council has established a computer-assisted bill drafting capability and performs the engrossing and enrolling functions. Beginning in 1979, the Legislative Council has engrossed and enrolled all bills and resolutions of the Legislative Assembly.

The committee recommends Senate Bill No. 2073 to repeal the Regulatory Reform Review Commission (as of January 1, 1995); to replace the Higher Education Review Committee with the Legislative Council; to eliminate certain reports and submissions to the Legislative Council; to remove restrictions on appointing certain interim committees; and to provide that staffing services of the Special Road Advisory Committee, Capitol Grounds Planning Commission, Regulatory Reform Review Commission, and the North Dakota-Saskatchewan-Manitoba Boundary Advisory Committee are to be performed by agencies other than the Legislative Council. The bill resulted from discussions by members of the Legislative Council concerning the statutory creation of interim committees, the addition of Legislative Council responsibilities during recent legislative sessions; and the effectiveness of outdated requirements.

The committee recommends Senate Bill No. 2074 to change the method of appointments to the Legislative Council. This bill resulted from a suggestion that the presiding officers should either follow the statutory requirements for appointing legislators to the Legislative Council or the statute should be changed to reflect current practice.

SESSION ARRANGEMENTS

Legislator's Automated Workstation (LAWS) System

During the 1985-86 interim, a proposal was made to the Legislative Procedure and Arrangements Committee with respect to the possibility of replacing legislators' bill racks with personal computer terminals. Committee members suggested that representatives of computer firms review the legislative process during the session, especially with respect to the use of bill racks by legislators. Representatives of IBM spent a day in each chamber during the 1987 session, interviewed legislators, and sat with legislators on the floor. During this review, it was found that legislators use bill racks to place notes on bills,

note votes taken, add personal notes, and place telephone messages with the bills.

During the 1987-88 interim, the Legislative Procedure and Arrangements Committee approved plans for development of the Legislator's Automated Workstation (LAWS) system on a pilot project basis for the 1989 session. The system contained four basic components—bill status, committee hearings, daily calendar, and personal services (which included telephone messages received by the telephone attendants). Four personal computer terminals were placed in each chamber during the 1989 session. The 1989 Annual Report of IBM referred to this system as an innovative use of computer equipment to enable legislators to track bills, revisions, and amendments more efficiently.

A questionnaire was distributed to each participant in the pilot project. In summary, the participants favored continuation and expansion of the project and addition of new features. As a result of the comments of the participants, the committee reviewed a proposal to enhance the LAWS system to allow the full text of a bill page to be displayed on one screen; access to individual roll call votes from almost every screen; faster access to move about the system; display of the current text of measures being considered on the calendar through use of the voting system, with the legislator merely pressing a designated key; computer searches of the Century Code; use of electronic mail to send messages to other legislators with workstations; access to lobbyist handouts, which will be scanned and made available on-line; word processing capability; spreadsheet capability; access to bill summaries on-line; and storage of telephone messages in caller sequence.

The committee determined the LAWS system should be continued on a controlled growth basis, with usage voluntary and participation assigned through the caucuses. The committee approved plans for enhancing the system to include items proposed to the committee and to expand the system to 24 workstations in the chambers, with a split of 16 in the House and eight in the Senate, for the 1991 Legislative Assembly.

Senate and House Journals

The committee reviewed several proposals to shorten and thus reduce the cost of printing the Senate and House journals. The proposals consisted of consolidating the language used to describe the report of a standing committee, and using bill numbers at the left margin rather than salutations; consolidating sixth order motions in the same manner as reports of standing committees; consolidating reports of conference committees in the same manner as reports of standing committees, and moving the names of conference committee members to the paragraph of the report; eliminating addresses in the lobbyist lists; restyling communications in the manner of reports rather than in the style of correspondence; eliminating the printing of the hearts and flowers ceremony; including in the journal a report from the Committee on Correction and Revision only when the journal is to be corrected and revised; eliminating the printing of the opening prayer; and eliminating the printing of a roll call category that

contains no listing of names. The committee approved the proposals and the proposals will be implemented for the 1991 Senate and House journals.

Journal Distribution Policy

The committee approved continuation of the policy initiated in 1985 to the effect that legislators would not be asked to fill out a list of persons who are to receive daily journals but that legislators upon request may have daily journals sent to as many as 15 persons.

8 1/2" x 11" Journals

Starting with the 1982 organizational session, the journals of the Senate and House were prepared by the Legislative Council through its computer system. There were delivery delays in getting copy to the contract printer and in receiving the printed journals. As a result, 8 1/2 x 11 inch journals were copied for legislators so they would have a journal on their desks by 8:00 a.m. of the following day. The committee determined that the problems in late delivery of the regular-sized journals have been resolved and there were very few days during the 1989 legislative session when the journals were late. The committee reviewed a proposal to eliminate the printing of the 8 1/2 x 11 inch journals and thus reduce printing costs. The committee approved the elimination of the 8 1/2 x 11 inch daily journals beginning with the 1990 organizational session.

Senate and House Calendars

The committee reviewed a proposal to shorten and thus reduce the cost of printing the Senate and House calendars. The proposal consisted of single spacing the 11th and 14th orders of business, with one line per bill which would include the committee of last referral, the committee vote, the committee recommendation, and the carrier of the bill; and the elimination of the addendum, which includes the title of the bill as well as the most recent action on the bill, to the calendar. The committee determined that the information provided in the addendum is of value to legislators who do not have terminals under the LAWS system. The committee approved the revised format with respect to the 11th and 14th orders and approved a similar format for the sixth order. The committee also approved an addendum that contains an abbreviated title.

Legislative Internship Program

Beginning with the 1969 Legislative Assembly, the Legislative Assembly has sponsored a legislative internship program in cooperation with the law and graduate schools at the University of North Dakota and the graduate school at North Dakota State University. The legislative internship program has provided the Legislative Assembly with the assistance of law school students and graduate school students for a variety of tasks, and has provided the students with a valuable educational experience. The allocation of interns among the three programs is six from the School of Law, four from the Department of Political Science at the University of North Dakota, and six from the graduate program at North Dakota

State University. Ten interns are assigned to committees, one is assigned to each of the four caucuses, and two are assigned to the Legislative Council office.

As a result of concerns with respect to possible problems with accreditation of the law school by the American Bar Association if law school students receive compensation for participating in the internship program, the program was converted to a fellowship program for the 1989 Legislative Assembly, with a stipend for an intern who completes the regular term of internship and with compensation for additional service by an intern who continues service beyond this regular term.

The committee reviewed the program and approved its continuation for the 1991 Legislative Assembly. The same procedure followed for selecting interns for the 1989 Legislative Assembly was followed, e.g., the majority and minority leaders from the prior legislative session interviewed those interns who were interested in serving as caucus interns. The interns will receive training and orientation by the Legislative Council staff and will be given their assignments prior to the session.

Legislative Tour Guide Program

For the past seven legislative sessions there has been a tour guide program to coordinate tours of the Legislative Assembly by high school groups. The tour guide program is extensively used by high school groups during the session, and other groups have been placed on the tour schedule at their request. Starting with the 1987 Legislative Assembly, two tour guides have been hired due to the heavy workload in scheduling tour groups. The committee approved the continuation of the legislative tour guide program for the 1991 session.

Legislative Document Library Distribution Program

Starting with the 1983 session, the Legislative Assembly has provided bills and resolutions, journals, and bill status reports to academic, special, and public libraries throughout the state which request this service. The program consists of sending on a weekly basis, through United Parcel Service (UPS), copies of introduced bills and resolutions, daily journals, and bill status reports. In 1983, 30 libraries received the documents; in 1985, 46 libraries received the documents; in 1987, 45 libraries received the documents; and in 1989, 51 libraries received the documents. The cost incurred by the 1989 Legislative Assembly for UPS shipping charges and printing the bill status reports for the 51 libraries participating in the program was \$12,479.54—an average cost of \$244.70 per participating library. The committee reviewed the cost of providing this service and determined that participating libraries should pay the approximate cost of printing their bill status reports and the Legislative Assembly should continue to absorb the cost of shipping the materials. The committee approved continuation of the legislative document distribution program for the 1991 Legislative Assembly, with the requirement that a participating library pay \$130 to subscribe to the program.

Bill Status Report System Access

The bill status report system began in 1969 as a Legislative Council computerized in-house operation to provide day-old information concerning the progress of bills and resolutions through the legislative process. The system has grown to an on-line system providing up-to-the-minute information concerning the status of bills and resolutions for use by legislative personnel and outside users. Although most outside users are state agencies, a number of private entities have gained access through arrangements with the Legislative Council and the Information Services Division of the Office of Management and Budget. In 1989, 50 outside users were authorized access. The cost for subscribing to the service has related solely to computer time. The committee reviewed information that substantial time is spent by personnel of the Information Services Division as well as the Legislative Council staff in answering inquiries concerning access to this system, answering questions about operation, providing actual connections for subscribers, preparing procedure manuals, and mailing information.

The committee approved the providing of access to the bill status report system to outside users provided that the user have compatible equipment and that each user pay the direct and indirect costs of providing access and obtaining usage. For access to the bill status report system during the 1991 legislative session, a fee of \$150 has been established as a subscription fee, with a monthly access charge of \$33 and a computer usage charge of 43 cents per CPU second.

Bill Status Report Subscription Fee

When the bill status report system began in 1969, the system consisted of printed reports. During the 1989 session, the Legislative Assembly printed over 135 copies of the bill status report for delivery to state libraries participating in the legislative document library distribution program, to various offices in the legislative branch, and to various state agencies. For the 1991 Legislative Assembly, state agencies that request printed bill status reports will receive them from the Information Services Division (at the agencies' cost). During the 1989 legislative session, the bill status reports were distributed by employees of the bill and journal room and the day old reports were picked up and distributed to persons requesting them on a first-come, first-served basis. Because the number of bill status reports printed by the Legislative Assembly will be substantially reduced for the 1991 Legislative Assembly, extra copies will not be available for distribution to private parties interested in receiving copies. The committee determined that bill status reports should not be provided on a basis that shows favoritism to any private person or group. The committee determined that because libraries participating in the document distribution program must pay \$130, the approximate cost of printing the bill status report, other individuals should be able to purchase a bill status report upon payment of a similar fee. The committee approved provision of printed bill status reports upon payment of \$130 to subscribe to the reports. The printed bill status reports would be distributed through the bill and journal room.

Bill Subscription Fee

Under House and Senate Rules 404, any statewide organization or association may be provided a copy of each introduced bill or resolution upon payment of a subscription fee established by the committee. The committee reviewed the cost of providing the service and established a fee of \$500 for the 1991 session.

Bill Distribution Policy

The committee approved continuation of the policy adopted by the Legislative Procedure and Arrangements Committee during the 1985-86 interim and followed in 1987 and 1989 to the effect that the joint bill and journal room should mail a small number of bills at no charge to a requestor, but if the request is made for a large number of bills or for all the bills introduced, the requestor is to pay the postage.

Appropriations Bills

The committee received a request from the Office of Management and Budget for a statement concerning whether substantive provisions should continue to be kept separate from appropriations bills. The committee recommends that substantive proposals relating to the executive budget should be in separate bills, with referral to the appropriate standing committees by the presiding officers as part of the pre-filing procedure.

The committee also received a request from the Office of Management and Budget relating to the preparation of appropriations bills in time for the organizational session. Under NDCC Section 54-44.1-07 budget data information prescribed by NDCC Section 54-44.1-06 is to be presented to the Legislative Assembly at the organizational session. Under Section 54-44.1-06 budget data information includes the appropriations bills embodying the budget data and recommendations of the Governor for appropriations for the next biennium. The Office of Management and Budget prepares the appropriations bills, but the Office of Management and Budget reported to the committee that the office could not meet the requirements of these sections. The committee recommends the Legislative Council staff be requested to receive appropriations bills implementing the Governor's budget for pre-filing after the statutory deadline but by December 20.

Doctor of the Day Program

The North Dakota Medical Association expressed willingness to continue its program of making medical services available to the Legislative Assembly. The committee invited the association to continue the Doctor of the Day Program during the 1991 session.

Chaplaincy Program

In cooperation with the Bismarck Ministerial Association, the House and Senate have chaplains open daily sessions with a prayer. The committee reviewed the procedure in effect during the 1985, 1987, and 1989 sessions which gave legislators until the end of December to schedule out-of-town clergymen to deliver prayers during the session. The committee requested the Legislative Council staff to notify all legislators prior to the convening of the session that

they have until December 31, 1990, to schedule out-of-town clergymen to deliver daily prayers during the 1991 session.

Session Employment Coordinators

The committee approved the hiring of personnel representing the two major political parties to receive and coordinate the handling of applications for session employment.

Session Employee Orientation and Training

The committee considered whether session employees should be provided orientation and training similar to that provided immediately before the convening of the 1989 Legislative Assembly. Committee members expressed support for training that would further enhance the ability of the Legislative Assembly to start the legislative process as early as possible.

The committee authorized the Legislative Council staff to conduct training sessions for the bill clerks, chief telephone attendant, information desk attendants, committee clerks, desk reporters, and the chief stenographer and payroll clerks at various times during the week preceding the legislative session. The committee recommends that the Employment Committees hire session employees to begin work at various times, commencing with the employment coordinators, a joint bill and journal room employee, the desk forces, the committee clerks, and finally all remaining session employees. The recommended periods of employment range from the fourth Monday in November to the first day of the session, depending on the employee position.

Bill and Journal Room Employee

Bills may be prefiled before the convening of the Legislative Assembly in January. Prefiled bills are delivered to the printer and copies are then printed and placed in the joint bill and journal room. Several requests are made for copies of prefiled bills, because hearings on these bills generally are scheduled early in the legislative session. The Legislative Procedure and Arrangements Committee first authorized the Employment Committees to hire an individual to organize the bill room and distribute bills prior to the convening of the 1979 Legislative Assembly. The committee reviewed the usefulness of this practice and authorized the Employment Committees to hire an individual to organize the joint bill and journal room, dispose of bills and journals remaining from the 1989 session, and distribute bills prior to the convening of the 1991 Legislative Assembly.

Legislator Supplies

The stationery for the 1989 Legislative Assembly was specifically designed to include the Centennial logo. The committee approved a new design for stationery of the members of the 1991 Legislative Assembly.

The committee approved continuation of the policy of providing letter files to legislators.

Incoming WATS Lines

The Legislative Assembly has provided incoming WATS lines during recent legislative sessions to allow constituents to leave messages or get information. During the 1985 and 1987 sessions, four incoming WATS lines were provided. Because of complaints concerning line unavailability, six incoming WATS lines were provided during the 1989 session and the number of telephone attendants was increased from nine to 13.

The committee reviewed a proposal to install a 900 WATS line instead of the 800 WATS line as a means to reduce the costs incurred in providing this service (\$78,205.44 in 1989), to reduce the tieup of incoming lines because of telephone banks being used to "pile on" messages on particular issues, and to provide a system whereby lines are available to people truly interested in making opinions known to their legislators. It was estimated that continuing the "free" incoming WATS line service would require up to five additional employees to provide adequate service in the telephone room, and that space is not available for such an expansion. The committee received information that American Telephone and Telegraph's MultiQuest Interactive 900 Service could be provided to the Legislative Assembly for an installation cost of \$3,000 and a charge of 30 cents for the first minute and 25 cents for each succeeding minute, with a billing and uncollectible fee charge of 10 percent of each call.

The committee determined that the six incoming WATS lines should be continued, but the legislative leadership should determine a policy to be followed in handling messages to individual legislators, to legislative delegations, and to all legislators.

Legislative Expense Reimbursement Policy

Section 26 of Article XI of the Constitution of North Dakota provides that payment for necessary expenses for legislators may not exceed that allowed for other state employees. The 1985 Legislative Assembly authorized legislators to receive up to \$600 per month as reimbursement for lodging. Because of the constitutional provision, reimbursement for expenses during the 1985 session was made pursuant to the policies established by the Office of Management and Budget with respect to state employees who rent apartments while away from their usual work locations for extended periods of time. Several questions arose after the 1985 session as to the reimbursement of items such as utilities, furniture rental, and repairs. The Legislative Council adopted the position that legislators should be reimbursed for what is identified as lodging expenses, including utilities and furniture rentals, and referred the expense reimbursement issue to the Legislative Procedure and Arrangements Committee for resolution.

During the 1985-86 interim, the Legislative Procedure and Arrangements Committee adopted a policy that allowed the following items as reimbursable lodging expenses during a legislative session: utilities - electricity and heat, water (including garbage collection and sewer charges), basic telephone service, and telephone installation charges; furniture - rental of furniture and appliances and transit charges for moving rental furniture and appliances;

and repairs for damage occurring during the legislator's tenancy - repairs to structure, plumbing or electrical repairs, and repairs to furniture and appliances. This policy was followed in determining reimbursable expenses during the 1985, 1987, and 1989 sessions. The committee adopted this policy as the policy to be applied for determining reimbursable lodging expenses during the 1991 session.

Television Coverage

The committee reviewed a proposal of Bismarck-Mandan Cable TV for live television coverage of the 1991 Legislative Assembly. During the 1989 session, Bismarck-Mandan Cable TV engineered and delivered a live and tape-delayed evening presentation of the North Dakota Senate during the legislative session. A camera was positioned on alternating sides of the gallery, and viewers were given the opportunity to observe the legislative process without having to leave their homes or places of business. This service was available to 42 percent or approximately 8,000 of Bismarck-Mandan Cable TV's subscribers who have a secondary level of service known as the variety tier. Under the proposal, Bismarck-Mandan Cable TV, through Community Access Television, a nonprofit corporation responsible for programming the public access channel of Bismarck-Mandan Cable TV, would provide legislative coverage on a basic tier channel. By changing channels, more than 20,000 households would have access to legislative coverage. The proposal was also to expand coverage to include the North Dakota House of Representatives on alternating weeks. The committee authorized Bismarck-Mandan Cable TV to expand the coverage of the 1991 Legislative Assembly as proposed.

Organizational Session Agenda

The 1989 Legislative Assembly passed three bills affecting the agenda of the organizational session. The Legislative Assembly, at the organizational session, is to receive (1) a presentation of the budget and revenue proposals recommended by the Governor; (2) a report by the Superintendent of Public Instruction regarding the status of school district planning grants for the biennium; and (3) a report by the Board of Higher Education on its seven-year plan and how funds proposed in the budget for the upcoming biennium will be used to implement the plan.

The committee approved a tentative agenda for the 1990 organizational session which, although based on the agenda for the 1988 organizational session, contains new items. The agenda includes time periods for joint sessions for receipt of the executive budget and revenue proposals by the Governor and the reports by the Superintendent of Public Instruction and the Board of Higher Education. Because of declining attendance at certain items on the 1988 agenda, the committee deleted time periods for panel discussions of the roles of the press and of lobbyists.

State of the State Address

During the 1989 session, the House and Senate convened in joint session at 1:30 p.m. on the first legislative day and the Governor presented his State of the State address beginning at 2:00 p.m. The com-

mittee approved a similar schedule for the 1991 State of the State address.

State of the Judiciary Address

The committee authorized the Legislative Council staff to make plans with the Chief Justice of the North Dakota Supreme Court for the State of the Judiciary address on the second legislative day of the 1991 session.

Tribal Address

During the 1983-84, 1985-86, and 1987-88 interims, representatives of the Indian tribes in North Dakota requested permission to appear before the Legislative Assembly to describe from their perspective the current status of the relationship between the tribes and the state of North Dakota. As a result of invitations extended by the committee during those interims, a spokesman from the tribes addressed each house of the Legislative Assembly during the first week of the 1985, 1987, and 1989 sessions.

The committee authorized the extension of an invitation to representatives of the Indian tribes to make a presentation to each house of the 1991 Legislative Assembly on a legislative day selected by the legislative leadership, similar to the presentation made during the 1989 session.

Legislative Compensation Commission Report

The committee requested that the report of the Legislative Compensation Commission be presented by the chairman of the commission to each house of the 1991 Legislative Assembly on a legislative day selected by the legislative leadership.

Military Exchange Program

During the 1983-84, 1985-86, and 1987-88 interims, the Legislative Procedure and Arrangements Committee approved a military-state government leader exchange program. An exchange program was held early in the 1985, 1987, and 1989 Legislative Assemblies.

This interim the committee authorized continuation of the program and extended an invitation to the military personnel to make arrangements for a military exchange program during the 1991 session similar to the program held during the 1989 session.

Legislative Fitness Day

During the 1985, 1987, and 1989 sessions, a physical fitness program was conducted for health screening purposes and other demonstrations. The committee extended an invitation to the North Dakota Alliance of Health, Physical Education, Recreation and Dance to provide health screening and other demonstrations on a legislative fitness day during the 1991 legislative session, similar to that conducted on January 11, 1989, which by concurrent resolution was designated as Legislative Fitness Day. The committee was informed that the North Dakota Alliance of Health, Physical Education, Recreation and Dance was unable to conduct a health and screening program for the Legislative Assembly due to the costs of such a program.

Ceremony Marking Burning of State Capitol

The committee received a request for scheduling a joint session of the Senate and the House for the afternoon of Wednesday, January 9, 1991, to allow for a program and ceremony marking the 60th anniversary of the burning of the old State Capitol in 1930, and the subsequent construction of the new Capitol. The program during the joint session would include a videotape of approximately 30 minutes in length and comments by various officials, with a reception at the Heritage Center on Wednesday evening. The committee approved the proposal for a joint session on Wednesday, January 9, for a ceremony commemorating the burning of the old Capitol.

Special Session Arrangements

The committee reviewed plans for arrangements necessary if the Governor were to call a special session of the Legislative Assembly as a result of the December 5, 1989, special election.

The three major areas for consideration for a special session are legislative rules, legislative employees, and telephones. The committee reviewed the rules amendments prepared for the 1986 special session, the telephone plan implemented for the 1986 special session, and the House and Senate employees employed during the 1986 special session.

The committee adopted the position that the initial arrangements for a special session would be rules amendments, a telephone plan, and employment of employees as followed for the 1986 special session, with consideration for the subjects of a special session. The committee also adopted the position that the expenses of a special session should be paid out of funds appropriated by a bill passed during the special session and that employee compensation be established by a concurrent resolution passed during that special session.

Legislative Council Authority

The committee reviewed a proposal to authorize the Legislative Council to establish specifications for publication of the North Dakota Century Code and to determine access to legislative information services and impose fees for providing legislative information services and copies of legislative documents. Under a contract executed in 1959, The Allen Smith Company published the North Dakota Century Code, and when that company was purchased by The Michie Company, publication of the Century Code was continued by Michie. The committee determined that continuity in publishing the Century Code, particularly with respect to editorial, information processing, and publication services is to the advantage of the state. The committee has also imposed charges for public libraries receiving documents under the Legislative Document Distribution Program and has authorized the imposition of charges for access to the on-line bill status report system. By rule, the committee has authority to establish a bill subscription price, but specific authority for imposing requirements for access to legislative information services, e.g., compatible equipment for access to the bill status system, is not contained in the rules.

Recommended Bill

The committee recommends House Bill No. 1057 to authorize the Legislative Council to establish specifications for publication of the North Dakota Century Code, to contract with a publisher with respect to publication services, to continue any agreement with a publisher and contract for continuing publication services, and to determine access to legislative information services and impose fees for providing these services and copies of legislative documents.

LEGISLATIVE PROCESS STUDY

Background

The Constitution of North Dakota was amended in 1976 to allow the Legislative Assembly to meet in regular session for 80 natural days (versus 60 legislative days) and to provide that days spent in regular session need not be consecutive. During the 1977-78 interim, the Legislative Procedure and Arrangements Committee studied the entire legislative process, with emphasis on the best possible method of using the 80 natural days available under the constitution, the appropriateness of the interim structure, the proper use of standing committees and interim committees, and the provision of professional and other staff personnel during the legislative session and during the interim between sessions. The 1977-78 interim Legislative Procedure and Arrangements Committee made no special recommendations concerning the use of the extra days available to the Legislative Assembly.

Legislative Procedures

In comparing the legislative deadlines in effect for the 1977 Legislative Assembly and the 1989 Legislative Assembly, only one permanent change has been made to a deadline. In 1987 the date for crossover, i.e., when bills originating in one house have to be sent over to the other house, was changed from the 33rd legislative day to the 34th legislative day. The following table illustrates the length of legislative sessions since 1975, and also the dates of convening and adjourning each Legislative Assembly:

1975	57 legislative days	January 7, 1975- March 26, 1975
1977	66 legislative days	January 4, 1977- April 8, 1977
1979	61 legislative days	January 3, 1979- March 29, 1979
1981	60 legislative days	January 6, 1981- March 31, 1981
1983	75 legislative days	January 4, 1983- April 20, 1983
1985	62 legislative days	January 8, 1985- April 5, 1985
1987	73 legislative days	January 6, 1987- April 19, 1987
1989	75 legislative days	January 4, 1989- April 20, 1989

The number of days for the 1981 session does not include the four legislative days of the reconvened session in November 1981.

As an indication of the workload of the Legislative Assembly, the following figures illustrate the number of bills introduced in the Senate and House and presented to the Governor since 1975:

Session	House Bills Introduced	Senate Bills Introduced	Bills Presented to Governor
1975	615	497	597
1977	601	553	590
1979	695	488	681
1981	675	441	655
1983	737	502	713
1985	663	512	701
1987	691	568	768
1989	674	542	783

Use of Legislative Days in Other States

With respect to legislative sessions in the 50 states, one state (Kentucky) with a biennial session meets in session in even-numbered years. House Bill No. 1574 (1989) would have provided for the North Dakota Legislative Assembly to meet in regular session in even-numbered years rather than in odd-numbered years. That bill failed to pass the House.

With respect to annual sessions, the limitations on the length of sessions vary from state to state. Approximately 36 states impose the same restrictions on sessions in odd-numbered years and in even-numbered years. Of those states, approximately 12 have no limitations on the length of legislative sessions. Several states have varying limitations depending upon whether the sessions are in odd-numbered or even-numbered years. Of the states that have different limitations with respect to odd-numbered/even-numbered years, the variations range from 40 legislative days/35 legislative days to 60 calendar days/30 calendar days. Two of the states with different restrictions use calendar dates, i.e., June 30 in odd-numbered years and May 15 in even-numbered years. One state (Virginia) provides that the session in an even-numbered year may be twice as long as a session in an odd-numbered year.

Recent Legislative Proposals

Since 1979 the Legislative Assembly has considered various proposals establishing a procedure for calling the Legislative Assembly back into regular session after adjournment, providing for a fiscal session in even-numbered years, providing for a budget adjustment session in even-numbered years, and providing for regular sessions in even-numbered years rather than odd-numbered years.

South Dakota Legislature

Committee members visited the South Dakota Legislature during its 1990 session. The South Dakota Legislature consists of 105 legislators, with 13 standing committees in each house. The standing committees are Appropriations, which is a five-day committee, three-day committees that meet on Monday/Wednesday/ Friday, and two-day committees that meet on Tuesday/Thursday. Committees meet in

the mornings with three-day committees meeting from one to one and one-half hours and two-day committees meeting for two hours. Floor sessions convene at 2:00 p.m. daily. Odd-year sessions are 40 days and even-year sessions are 35 days in length, with the actual length being the full length allowed (75 days). During the 1988 and 1989 sessions, there were 782 House bills and 676 Senate bills introduced. There are deadlines for introducing bills and for handling bills, and bills can be held (killed) in committee, subject to being "smoked out" by a one-third vote of the members of the house. Based on discussions with South Dakota legislators, South Dakota legislators believe they are able to maintain more of a "citizen" legislature because of the shorter annual sessions rather than a longer biennial session.

Wyoming Legislature

The Wyoming Legislature meets for a 40-day general session in odd-numbered years and a 20-day budget session in even-numbered years. The Wyoming Legislature consists of 64 representatives and 35 senators, with 10 standing committees in each house. Two committees in each chamber do not "parallel" one another, and the meeting days for committees are selected before each session, depending on expected workload. For example, during one session a committee may be a Monday/Wednesday/Friday committee and during the next session it may be a Tuesday/Thursday committee or a Monday/Wednesday/Thursday committee. Legislators may serve on conflicting committees and must divide their time between the committees. The committees generally meet at three separate times - in the morning before the session, during lunch, and upon adjournment. Floor sessions generally start at 10:00 a.m. and recess at noon, then reconvene at 1:30 p.m. and continue until 6:00 p.m. Under the constitution the legislature is limited to 60 legislative days every two years, with no more than 40 legislative days in one year. The actual length of recent general sessions has been 38 to 39 legislative days and the actual length of budget sessions has been from 20 to 21 legislative days. There are deadlines for introducing bills and for handling bills and for when bills must be considered or else they will not be

considered. During the 1989 general session 801 bills were introduced and during the 1990 budget session 405 bills were introduced. Bills do not carry over from one session to the other, nor do they have to be acted on in either session. Bills may be killed in committee, and may be held by the chairman of a committee subject to a majority of the committee requiring the chairman to act. Most legislative work is done by the committee of the whole and floor amendments are allowed during each reading (each bill is read three times). Wyoming is on a biennial budget cycle, but each session considers state government appropriations bills. The budget session convenes on the third Monday in February and appropriations bills are automatically introduced. Any other bill requires a two-thirds vote of the members-elect prior to the introduction in the house of origin. The biennial budget takes effect on July 1 of even-numbered years. Information presented to the committee indicates turnover of Wyoming legislators is increasing, no legislator has 20 years of service in the legislature, and the majority of legislators do not have more than six years of service.

Survey of Legislators

The 1989 legislative process questionnaire included one question with respect to suggestions on the appropriate use of the 80 natural days allowed for the Legislative Assembly to be in session. The responses to the question included using approximately half the days in each year, providing a short session in the off year, providing a budget adjustment session in even-numbered years, and limiting the number of bills a legislator may introduce.

Recommended Study Resolution

The committee recommends House Concurrent Resolution No. 3006 directing the Legislative Council to study and establish procedures necessary to implement annual sessions of the Legislative Assembly beginning in 1993 and 1994. Approval of this study resolution and prioritization of the study by the Legislative Council will initiate the process necessary for establishing procedures to implement annual legislative sessions. The procedures would be established by rules approved by each Legislative Assembly when it adopts rules at its organizational session.

LEGISLATIVE EMPLOYEE COMPENSATION STUDY

History of Legislative Employee Compensation

In 1890 the first Legislative Assembly set the compensation of employees of the Legislative Assembly by law, which also specified the number and types of employee positions. In 1935 employee positions and compensation levels were authorized to be set by resolution, but the maximum compensation limits for various positions were still set by law. In 1951 the maximum compensation limits were removed from the law and the language was added that employee compensation would be set by concurrent resolution. Except for the 1973 and 1975 Legislative Assemblies, compensation of persons employed by the Legislative Assemblies has been on a daily basis, ranging from the top compensation of \$7 per

day in 1890 to \$90 per day in 1989. In 1973 and 1975 a weekly wage was set for supervisory employees and an hourly rate, along with a seasonal employment increment, was set for other employees.

The number of employees of the Senate and House has generally increased from 1890 to 1989. In 1890 there were 16 Senate employees and 18 House employees, and in 1989 there were 61 Senate employees and 82 House employees (based on the statutes and concurrent resolutions identifying the positions).

1989 Legislative Assembly Employee Compensation

For the 1989 Legislative Assembly, Senate Concurrent Resolution No. 4027 identified the employees of each chamber as well as the daily wage to be paid to each employee by position. The daily wage ranged from \$53 to \$90, which includes the \$5 per day increase received because the 1989 Legislative Assembly provided a general salary increase for state employees. That \$5 per day resulted in a wage increase ranging from 5.8 percent to 10.4 percent. The total compensation received by individual employees ranged from approximately \$3,000 to \$9,400.

Although a daily wage was established for a category of employees, employees within a category received a different amount of total compensation. Some employees were paid for workdays before the regular session convened, and some employees were paid for workdays after the regular session adjourned.

Committee Clerks

The committee focused on the compensation levels of committee clerks. Although committee clerks are one category of employees, the daily wage for committee clerks varies depending upon the house and the committee. In 1989 the Senate and House assistant committee clerks each received \$60 per day, the House chief assistant committee clerk received \$60 per day, the Senate and House committee clerks each received \$63 per day, the Senate and House assistant Appropriations Committee clerks each received \$67 per day, the Senate chief committee clerk received \$69 per day, and the Senate and House Appropriations Committee clerks each received \$71 per day. The Senate had a chief committee clerk, while the House had a chief assistant committee clerk.

The committee reviewed the committee clerks' workloads based on the amount of minutes prepared by each clerk, the number of roll call votes taken by each clerk, and the number of measures referred to committee. It was discovered that several bills had no minutes prepared, while others had a substantial number of pages of minutes. Based on that information, the committee determined that the clerks for 10 committees placed in the top 50 percent of all three categories. Those committees were Senate Appropriations; Senate and House Education; Senate and House Industry, Business and Labor; Senate and House Judiciary; Senate and House Human Services; and House Finance and Taxation.

Conclusion

Committee members were concerned about the variation in pay for employees within the same category of positions and the lack of accounting for time compensated for after the Legislative Assembly has adjourned. Committee members suggested that such an accounting could be by the Chief Clerk of the House and Secretary of the Senate to the Legislative Council for submission to the Legislative Management Committee.

The committee recommends that three-day committee clerks receive the same daily compensation as the assistant Appropriations Committee clerks.

STATE OF THE LAW WITH RESPECT TO LEGISLATIVE APPORTIONMENT STUDY North Dakota Law

Section 1 of Article IV of the Constitution of North Dakota provides that the "senate must be composed of not less than forty nor more than fifty-four members, and the house of representatives must be composed of not less than eighty nor more than one hundred eight members."

Section 2 of Article IV requires the Legislative Assembly to "fix the number of senators and representatives and divide the state into as many senatorial districts of compact and contiguous territory as there are senators." In addition, the districts ascertained after the 1990 federal census must continue until the adjournment of the first regular session after each federal decennial census, or until changed by law. The Legislative Assembly is also required to "guarantee, as nearly as practicable, that every elector is equal to every other elector in the state in the power to cast ballots for legislative candidates." Also a senator and at least two representatives must be apportioned to each senatorial district. Two senatorial districts may be combined only when a single senatorial district includes a federal facility or installation containing over two-thirds of the population of a single-member senatorial district. Elections may be at large or from subdistricts.

In addition to the constitutional requirements, NDCC Section 54-03-01.5 provides that a legislative apportionment plan based on census data taken after 1979 must ensure that population deviation from district to district must be kept at a minimum and that the total population variance of all districts, and subdistricts if created, from the average district population may not exceed recognized constitutional limitations. Section 54-03-01.7 establishes the boundaries of legislative districts.

Federal Case Law

The committee reviewed information on recent federal court decisions concerning legislative apportionment. Basically, federal courts will provide relief in legislative apportionment cases where there are federal constitutional violations. Generally, the courts have held that an overall range of less than 10 percent is a minor deviation insufficient to establish a prima facie case of invidious discrimination against a racial or political group. An overall range of over 10 percent creates a prima facie case of invidious discrimination and requires justification by the state

based on legitimate considerations incident of the effectuation of a rational state policy.

The information reviewed by the committee pointed out that although partisan gerrymandering cases are justiciable, proving unconstitutional discrimination is very difficult. To support a finding of unconstitutional discrimination, there must be evidence of continued frustration of the will of the majority of voters or effective denial to a minority of voters of a fair chance to influence the political process.

The information reviewed by the committee also pointed out that although multimember districts are not unconstitutional per se, the United States Supreme Court has stated that a redistricting plan including multimember districts will constitute an invidious discrimination if it can be shown that the plan operates to minimize or eliminate the voting strength of racial or political elements of the voting population.

Conclusion

The committee makes no recommendation with respect to this study. The study was only of the state of the law with respect to legislative apportionment. The Legislative Assembly must be cognizant of federal requirements and with respect to state statutory requirements, changes can be made when a specific legislative districting plan is considered.

LEGISLATIVE APPORTIONMENT INFORMATION FOR 1990 CENSUS TRACTS Background

Under Public Law 94-171, approved December 23, 1975, the Congress of the United States authorized officials responsible for legislative apportionment in each state to submit a plan identifying geographic areas for which specific tabulations of population are desired. The Bureau of the Census was directed to establish criteria for the plans and to provide the tabulations as expeditiously as possible after the census date. The bureau designated this program as the 1990 census redistricting data program.

Phase 1 - Block Boundary Suggestion Project

Under Phase 1 of the program, states were given the opportunity to suggest topographical features as boundaries for census blocks (the smallest geographic areas for which census information will normally be provided). During the 1985-86 interim, the Legislative Procedure and Arrangements Committee participated in Phase 1 and contracted with Dr. Floyd Hickok of the Department of Geography at the University of North Dakota. Dr. Hickok had been involved with the technical aspects of the reapportionment study in 1981 and the reapportionment plan adopted during the 1981 reconvened session.

Phase 2 - Census Block Maps

Phase 2 of the program originally was scheduled to commence in late 1987 or early 1988 when the Census Bureau delivered maps with the block boundaries suggested under Phase 1. The Census Bureau delivered the maps in 1989. Precinct boundaries were placed on the maps and the maps were returned to

the Census Bureau in 1990. The Census Bureau will provide census information for those precincts. In accordance with the requirements of the Census Bureau, letters signed by the majority and minority leaders and the Governor were sent to the Census Bureau certifying that the Phase 2 maps were developed in a nonpartisan manner.

1991 Redistricting Concerns

The committee reviewed several concerns with respect to preparations for a 1991 legislative redistricting plan. Each airbase in the state was treated as a single unit in 1981, and during the 1985-86 interim the Legislative Procedure and Arrangements Committee sent a letter to the Census Bureau requesting the tabulation of airbase population on a block basis. A change in tabulating the airbase population was made for states participating in Phase 2; however, major population areas on the bases were unknown and it was difficult to mark areas for tabulating airbase population.

Based on the first population counts from the 1990 census, the state has a population of 634,223—a loss of 18,494 persons from 1980. The population on the west side of the Missouri River is 90,533 and the population on the east side of the Missouri River is 543,690. Maintaining the Missouri River as a boundary may cause difficulty in achieving population equality between eastern and western districts. North Dakota will probably receive the detailed population counts in March 1991. Although adjustments to the counts may be made until July 15, 1991, any adjustments in North Dakota would probably be small and fairly evenly distributed.

The committee reviewed suggestions that the 1991 Legislative Assembly, during its regular session, determine the number of districts to be used in any redistricting plan, the standards with respect to allowed population deviation, the process for considering third party plans, the criteria to be used in determining holdover Senate seats, whether district boundaries should “float” with political subdivision boundaries, e.g., follow city limits as those limits change, and when redistricting plans are to be considered, e.g., during the regular session or during a reconvened session after study during 1991.

Reapportionment Services

The committee authorized a contract with Dr. Hickok to provide legislative reapportionment services to the Legislative Council through December 15, 1991.

CONSTITUTIONAL REQUIREMENTS GOVERNING AMENDMENTS TO BILLS

The Legislative Council directed the committee to review the constitutional requirements that amendments be germane to the subject matter of the bills to which they are attached. This directive arose because of attempts during the 1989 legislative session to add amendments which may or may not have been germane to the subject matter of a bill.

The relevant constitutional provision is Section 13 of Article IV of the Constitution of North Dakota, which provides, in part:

No law may be enacted except by a bill passed by both houses, and no bill may be amended on its passage through either house in a manner which changes its general subject matter. No bill may embrace more than one subject, which must be expressed in its title; but a law violating this provision is invalid only to the extent the subject is not so expressed.

The committee reviewed decisions of the North Dakota Supreme Court dating back to 1902, to the effect that the section is to be liberally construed, but the body of a bill may contain numerous provisions if they all relate to the one subject expressed in the title. The court has also determined that the section does not condemn a title on account of its generality, nor require that a title embrace a complete synopsis or index of the contents of the bill. The requirement of the section is satisfied if the subject of the legislation is fairly expressed, though in general terms, and if all provisions in the bill are fairly germane to that subject and consistent with the avowed purpose of the bill.

Conclusion

The committee makes no recommendation with respect to this study. The study was only of the constitutional requirements that an amendment be germane to the bill to which it is attached. The section at issue is Article IV, Section 13. Generally, the section is given a liberal construction in that a title may describe a broad subject area, and as long as provisions of the Act are germane to that subject area, the Act will be upheld as not violative of Section 13.

APPROPRIATION FOR IMPROVEMENTS TO THE LEGISLATIVE WING

Background

The major legislative wing renovation project dates back to the 1977 Legislative Assembly, which authorized the construction of the Judicial Wing-State Office Building. Over the years various projects have been undertaken to renovate the legislative wing, and during the last interim projects included installation of blank committee room signage boards for use during the interim, refinishing of the benches in the House and Senate chambers, installation of tinted windows in the House chamber, initiation of installation of thematic pictures in committee rooms, and installation of a second urinal in the men's restroom in the House chamber. The 1987-88 interim Legislative Procedure and Arrangements Committee recommended 1989 House Bill No. 1058 to appropriate funds for completing the installation of thematic pictures in the remaining committee rooms and for remodeling the front desk in the House chamber to expand usable work space and reduce the height of the front desk. Prior to approval of the bill by the 1989 Legislative Assembly, funds were added to enhance the voting systems, repair microphones in the Roughrider Room, replace the sound system in the House and Senate chambers, initiate Phase I of decor development in the Brynhild Haugland Room, install interactive video in the Roughrider and Harvest rooms, and install lighting on the Capitol grounds.

Committee Room Pictures

Since the 1983-84 interim, interest has been expressed in having committee rooms contain displays related to the names of the rooms. As the result of a request by the Legislative Procedure and Arrangements Committee during the 1985-86 interim, the State Historical Society developed a prototype proposal illustrating the types of displays that could be placed in committee rooms. The proposal was prepared for the Missouri River Room and included a large wall-mounted exhibit panel, and two small, wall-mounted exhibit panels to supplement the large panel. That committee authorized the State Historical Society to install thematic pictures, rather than exhibits as originally proposed, in the committee rooms, as time permits. Before the Legislative Assembly convened in 1989, thematic pictures had been installed in the Missouri River Room.

The committee reviewed proposed thematic displays for 11 committee rooms - Roosevelt Park, Fort Union, Peace Garden, Fort Totten, Harvest, Red River, Pioneer, Roughrider, Sakakawea, Lewis and Clark, and Fort (Abraham) Lincoln. The displays were proposed by a consultant under contract with the Legislative Council who works with designing and developing exhibits for the State Historical Society. The committee approved the proposals for the (Theodore) Roosevelt (National) Park Room, Fort Union Room, Peace Garden Room, Fort Totten Room, Red River Room, Roughrider Room, Sakakawea Room, Lewis and Clark Room, and Fort Lincoln Room.

Voting System Enhancements

The committee reviewed a proposal to enhance the voting systems used by the Senate and House. The systems were installed by Daktronics, Inc., in 1982. The proposal was to upgrade the systems technologically, primarily through replacement of the Superbrains with IBM PS/2 Model 50s and installation of new software, replacement of the processor modules currently located behind the chambers, and replacement of the wall displays in each chamber with displays allowing up to six lines in the Senate and six to eight lines in the House. The committee approved the proposal to enhance the voting systems and changes were made early in 1990.

Roughrider Room Microphones

The committee reviewed a proposal to replace the microphones in the Roughrider Room with microphones that are flexible so as to avoid damage from materials on committee tables or attempts to bend the microphones. The committee approved the installation of new microphones with flexible stems in the Roughrider Room.

Senate and House Sound Systems

The committee reviewed a proposal containing four options for enhancing the sound systems of the Senate and House chambers. The options were to (1) upgrade the existing microphone coil cords, plugs, and jacks; (2) upgrade the overall system to include new handheld microphones and hardware at each desk, on/off switches at each desk, and new preamplifiers and signal processing; (3) upgrade the

overall system similar to the previous option except that instead of handheld microphones there would be fixed microphones at each desk; and (4) tie the sound system into the voting system so that instead of each member controlling whether the microphone of that member is on or off, that member would press the "press to speak" button on the voting box and the presiding officer would then have displayed on that officer's control panel the request of that member and that officer would then turn that microphone on through touching a button for that member. Committee members discussed whether replacement of microphone coil cords, plugs, and jacks would be adequate to solve the difficulties of sections in the House chamber becoming inoperative because of a defective microphone. After determining that the major cause of the problems in the House chamber was the wear and tear on the plugs and jacks, the committee approved the option to upgrade the existing microphone coil cords, plugs, and jacks in both chambers.

Chamber Wiring

During its discussions of the LAWS system and the installation of computer terminals in the Senate and House chambers, the committee reviewed a proposal that each legislator's desk be wired for installation of a computer terminal, as well as the front desks. The committee approved the installation of chamber wiring by the staff of the Director of Institutions as proposed to the committee.

Mailboxes

The committee reviewed a proposal to install boxes for the sorting of mail for individual legislators. Committee discussion of the proposal indicated that mailboxes would get the mail off the desks of individual legislators and everything distributed other than telephone messages and notes from legislator to legislator could be deposited in the mailbox for that legislator. The committee toured the legislative chambers and determined that two available areas are in the entry to the joint supply room or the west and northwest walls of the joint supply room. The committee approved the installation of shelving in the joint supply room to provide for mailboxes for legislators. Use of the joint supply room allows space for the required number of mailboxes and for sorting either in the joint supply room or in the entryway, and provides security in that personnel stationed in the joint supply room would have control over the mailboxes.

Postponed Projects

Several projects contemplated within the funds available for improvements to the legislative wing were postponed by the committee.

The initial suggestion to remodel the front desk in the House arose because of the numerous forms the desk reporter completes in recording information for the preparation of the journal. The Legislative Council staff is developing a managed computerization of the front desk, and after full computerization of the front desk (which is planned to be in place for the 1995 Legislative Assembly), there may be little need for expansion of the desk to handle paperwork. The

committee determined that any action to remodel the front desk should be delayed until the impact of full computerization is determined.

The proposal for installation of interactive video in the Roughrider and Harvest rooms related to requests for video presentations during the 1989 session. The proposal started with a 46-inch big screen television and a video cassette player and progressed to an interactive video system connected to the institutions of higher education. The Information Services Division contracted for a study of the needs for interactive video by governmental agencies, and a consultant to the division suggested that no expenditures be made until completion of the plan to determine what type of interactive video is to be provided governmental agencies, and how the links are to be made. After the committee determined that action on installation of interactive video should be delayed, the committee received a proposal by the Information Services Division for the wiring of a committee room to provide for interactive video sessions through the Higher Education Video Network. The committee approved the use of a committee room for the installation of a video conferencing system through the statewide video network, with the specific room subject to the approval of the Director of Institutions and the chairman of the Legislative Council. The chairman authorized the wiring of the Pioneer Room for the video conferencing system.

The committee reviewed a proposal to install lights around the Capitol mall and on permanent walkways on the Capitol grounds. The committee authorized the expenditure of funds for the installation of a lighting system on the Capitol grounds as recommended by the Director of Institutions and approved by the Capitol Grounds Planning Commission. The Director of Institutions asked the committee to delay installation of outdoor lighting on the Capitol mall due to the energy conservation programs put in place as a cost savings measure in light of budget cuts made to the Director of Institutions' budget after the December 5, 1989, special election. The Capitol Grounds Planning Commission by motion disap-

proved the proposal to locate lights on the Capitol mall at this time due to budget cuts after the December 1989 referral election.

Committee Hearing Schedule Monitor System

The committee reviewed a proposal to replace the committee hearing schedule monitor system with the IBM InfoWindow System. The infowindow system consists of a personal computer, a touch screen, and an optional video disk player. The committee viewed a demonstration whereby committees could be identified by icons and upon touching the appropriate place on the screen, the hearing schedule for that committee would be displayed. By touching another spot on the screen a map with directions to the hearing room could be displayed. The system could be expanded to include a map of the state showing legislative districts, and by touching the district, information on legislators from that district would appear. Discussions concerning this proposal suggested that this type of system could replace the people at the information kiosk as well as the committee hearing system monitors. The committee determined that the feasibility of this system should be reviewed for installation at a future time.

MEMORIAL HALL GUIDELINES

North Dakota Century Code Section 54-35-02(8) provides the Legislative Council with the power and duty to control the use of the legislative chambers and permanent displays in Memorial Hall. This authority has customarily been delegated to the Legislative Procedure and Arrangements Committee. Under guidelines adopted in 1981, any permanent display in Memorial Hall is to be reviewed annually. In 1982 the committee approved relocating the Liberty Bell to the Heritage Center, and in 1984 the committee approved relocating two statues to the Heritage Center. Since the removal of the statues in 1984, Memorial Hall does not contain any permanent display.

POLITICAL SUBDIVISIONS COMMITTEE

The Political Subdivisions Committee was assigned four studies. Senate Concurrent Resolution No. 4034 directed a study of the administration of building and mechanical code enforcement at the state and local level to identify inadequacies, determine the appropriate placement of building code responsibilities, and recommend administrative improvement. Senate Concurrent Resolution No. 4058 directed a study of the problems associated with solid waste management, including integrated waste management; use and availability of landfills; recycling methods and projects; incineration of solid waste; involvement of government in solid waste management; feasibility of pilot projects designed to promote the recycling of solid waste; and laws and rules concerning the use of underground storage tanks. Senate Concurrent Resolution No. 4060 directed a study of the methods by which the state acquires and holds title to real property, the feasibility of simplifying or clarifying laws regarding acquisition and ownership of real property by the state, the effect on local tax bases of ownership of real property by the state, and the feasibility or desirability of requiring divestiture by the state of certain real property. Senate Concurrent Resolution No. 4066 directed a study of the economic and social impact on political subdivisions, the agricultural community, and the business community when the state or federal government acquires land and the land is removed from the political subdivisions' tax bases.

Committee members were Senators Clayton A. Lodoen (Chairman), Jim Dotzenrod, Donna Nalewaja, David E. Nething, and Larry W. Schoenwald and Representatives Gordon Berg, Rick Berg, June Y. Enget, Odell Flaagan, Jim Haugen, John M. Howard, Arthur Melby, Dagne B. Olsen, Vince Olson, Michael A. Schatz, Orville Schindler, and Bill Starke.

The report of the committee was submitted to the Legislative Council at the biennial meeting of the Council in November 1990. The report was adopted for submission to the 52nd Legislative Assembly.

BUILDING CODE STUDY State Building Code

During the 1977-78 interim, the Legislative Council's interim Natural Resources Committee studied the feasibility of providing state assistance to local authorities to develop and put into effect local building codes or of adopting a statewide building code.

As a result of the study, the committee recommended to the Legislative Council Senate Bill No. 2076 (1979), which provided for the adoption of a State Building Code consisting of the 1976 Uniform Building Code with the 1978 Supplements. According to the 1979 Legislative Council report:

The committee concluded that, while adoption of a State Building Code was preferable to fostering the adopting of many local codes throughout the state, enforcement of the code should be placed in the hands of local

authorities, more familiar with local needs. While enforcement of the code is discretionary, the provisions adopted by the committee guarantee that all areas of the state are covered by the provisions of the code.

Senate Bill No. 2076 was enacted and was codified as North Dakota Century Code (NDCC) Chapter 54-21.3. Cities, townships, and counties are permitted to amend the State Building Code if the local standards meet or exceed those of the State Building Code. Cities and townships may enforce the code within their areas of jurisdiction and a county may enforce the code in areas of the county where the code is not administered by a city or township. Cities and townships may relinquish to a county their authority to enforce the code or may contract for enforcement of the code.

As originally enacted, Chapter 54-21.3 required the state construction superintendent to implement the State Building Code and to provide local enforcement agencies with information to administer the code and develop continuing education programs in the field of building codes and practices. In 1983, Senate Bill No. 2408 was enacted. That bill eliminated the position of state construction superintendent, transferred the responsibility for implementation of the State Building Code to the Office of Management and Budget, and removed the provisions relating to continuing education.

Building Code Administration and Enforcement in Other States

The committee reviewed building code administration and enforcement in neighboring states.

Minnesota

The commissioner of the Department of Administration, the department that manages the internal operations of the executive branch of government in Minnesota, is required to establish a code of standards for construction, reconstruction, alteration, and repair of buildings. The code must conform, if practicable, to model building codes generally accepted and in use throughout the United States. The director of the Building Codes and Standards Division of the Department of Administration administers the code. The Minnesota State Building Code applies statewide and supersedes the building code of any municipality. Municipalities in Minnesota are required to adopt and enforce the State Building Code with respect to new construction.

The governing body of each Minnesota municipality is required to appoint a building official to administer the code. The law requires building officials to possess certain qualifications and satisfy continuing education requirements. If the commissioner of administration determines that a municipality is not properly administering and enforcing the State Building Code, the commissioner may transfer administration and enforcement of the code to the State Building Codes and Standards

Division. However, the cost of administration and enforcement must be borne by the municipality.

South Dakota

South Dakota has no State Building Code. The State Fire Marshal Division regulates construction and remodeling of schools. That division also conducts inspections of lodging places and places of assembly. South Dakota law provides that to the extent that a governing body of any local government adopts an ordinance prescribing standards for new construction, the ordinance must comply with the 1985 edition of the Uniform Building Code, or subsequent codes adopted by the International Conference of Building Officials.

Montana

The Montana Department of Commerce, which consists of several divisions and bureaus including the Building Codes Bureau, is required by statute to adopt a State Building Code. The department has adopted the 1988 edition of the Uniform Building Code as the State Building Code. The Building Codes Bureau enforces the State Building Code and may certify city or county enforcement programs. Cities and counties are authorized to adopt building codes to apply in their jurisdictional areas; however, the codes may include only codes adopted by the Building Codes Bureau.

The Building Codes Bureau administers and enforces the state building, mechanical, plumbing, and electrical codes. The state plumbing and electrical boards are within the Department of Commerce and all contractor licensing is done through the department. The Building Codes Bureau is funded solely through fees generated by the bureau.

Testimony and Committee Considerations

The director of the Office of Management and Budget has assigned State Building Code administration duties to the Office of Intergovernmental Assistance, a division of the Office of Management and Budget. Representatives of the Office of Intergovernmental Assistance testified that although they attempt to answer questions with respect to the State Building Code, the office lacks the expertise required to administer the State Building Code and that building code administration and enforcement duties should not be a function of that office.

One problem especially evident with respect to building code administration and enforcement is the large number of state and local government entities administering various codes affecting builders. At the state level, the State Electrical Board, State Plumbing Board, State Department of Health and Consolidated Laboratories, State Department of Human Services, and Workers Compensation Bureau all administer and enforce various codes relating to buildings and safety. The committee received testimony indicating that a state board that would combine all state building and safety code responsibilities may be a possible solution to the building code administration and enforcement problems. Committee members generally agreed that creating a new agency for that purpose was not desirable at this time.

The committee considered a bill draft that would have established a State Building Board consisting of five members appointed by the Governor, including a member of the North Dakota Building Officials Association, a contractor, an architect, and two representatives of the public. The bill draft would have required the board to review the State Building Code and model building codes and recommend to the Legislative Assembly changes to the State Building Code.

Committee members generally agreed that expanding state government by creating another board was not the solution to the building code administration and enforcement problem. The various building industry groups could work together and make recommendations to the Legislative Assembly regarding changes in the State Building Code.

The committee considered a bill draft that required the director of the Office of Management and Budget to employ a state building officer who is certified by the International Conference of Building Officials. The state building officer would assist local building officials and state entities in interpreting the State Building Code. The bill draft also amended the State Building Code law to provide that the State Building Code may be amended by cities, townships, and counties to conform to local needs, except that the standards established could not exceed those of the State Building Code. The bill draft also provided that the State Building Code is the 1988 Uniform Building Code.

The committee considered a bill draft that provided that the State Building Code consists of the 1988 Uniform Building Code. In addition, the bill draft provided that the State Building Code could be amended by cities, townships, and counties to conform to local needs.

The committee considered the desirability of placing State Building Code administration responsibility with a different state agency or department. One option was to place the responsibility with the Secretary of State because the Secretary of State is responsible for contractor licensing. However, committee members generally agreed that the Office of Management and Budget could fulfill building code administration duties by employing a certified building inspector. Local government building officials and representatives of the building industry argued that local governments should be allowed to amend the State Building Code to conform to local conditions even if the local amendments are less stringent than the State Building Code. Committee members generally agreed that local governments should be permitted to amend the state code to conform to local needs because the Uniform Building Code is designed to address building conditions in more populous areas.

Representatives of various building industry groups testified that a state building board should be established to review the State Building Code and model building codes and to recommend to the Legislative Assembly changes to the State Building Code. They contended that a state building board consisting of building industry representatives could keep abreast of building code changes and consider

modifications in model building codes because most model codes are not designed to apply to rural areas.

The committee also heard testimony relating to amending the State Building Code to adopt the 1988 edition of the Uniform Building Code. The International Conference of Building Officials updates the Uniform Building Code every three years. The updates generally incorporate new safety measures and improved building techniques. Opponents of updating the State Building Code to the 1988 Uniform Building Code argued that the 1988 edition contains certain requirements that may impose substantial new burdens on builders.

Recommendations

The committee recommends Senate Bill No. 2075 to require the director of the Office of Management and Budget to employ a state building official who would have to be certified by the International Conference of Building Officials. The bill also would provide that the 1988 Uniform Building Code would be the State Building Code and that the State Building Code could be amended by cities, townships, and counties to conform to local needs, except that the standards could not exceed those of the State Building Code.

The committee recommends Senate Bill No. 2076 to provide that the 1988 Uniform Building Code is the State Building Code and that the State Building Code could be amended by cities, townships, and counties to conform to local needs.

SOLID WASTE MANAGEMENT STUDY

Background

The disposal of solid waste in landfills is a potential source of contamination of ground water. The increasing amounts of solid waste being deposited in landfills is creating problems throughout the country. Because of proposed federal regulations relating to the design, operation, and closure of landfills, many local governments are closing their landfills to avoid the high cost of operating and maintaining a landfill.

North Dakota Solid Waste Management and Land Protection Act

North Dakota Century Code Chapter 23-29 addresses the transportation and disposal of solid waste. Section 23-29-04 provides that the State Department of Health and Consolidated Laboratories is responsible for administration and enforcement and may adopt rules governing solid waste storage, collection, transportation, handling, resource recovery, and disposal. In addition, the department is authorized to establish procedures for permits governing the design, construction, operation, and closure of solid waste management facilities and systems.

The department has adopted rules establishing minimum standards for the storage, collection, transportation, and disposal of solid wastes. The rules prescribe standards for storage containers and vehicles used for collection and transportation of solid wastes. In addition, the rules establish standards for landfills, incinerators, and other methods of waste disposal. The rules require owners or operators constructing, installing, or establishing a solid waste

disposal operation to submit the plans for the operation to the department for review. If the department determines that the planned operation complies with the rules governing solid waste disposal operations, the department issues a construction permit. A disposal operation may not operate unless the owner or operator has obtained the permit. Under the rules, the department is permitted to impose reasonable conditions upon a permit to operate including recordkeeping and reporting requirements. The department is authorized to suspend, modify, or revoke permits to construct or operate solid waste disposal operations.

Federal Law

The Resource Conservation and Recovery Act of 1976 was enacted to address the problem of solid waste disposal. The Act and its amendments, including the Solid Waste Disposal Act amendments of 1980 and the Hazardous and Solid Waste amendments of 1984, place responsibility for solid waste management with the Environmental Protection Agency.

Under the Resource Conservation and Recovery Act, the administrator of the Environmental Protection Agency is required to adopt rules for solid waste management including guidelines for thermal processing of solid waste, land disposal of solid waste, and storage and collection of residential, commercial, and institutional solid waste. In August 1988 the Environmental Protection Agency published in the Federal Register proposed criteria for municipal solid waste landfills. The rules have not been finalized.

As originally proposed, the rules would apply to owners and operators of new and existing municipal solid waste landfills except disposal facilities that no longer receive solid waste as of the effective date of the rules and have received a final layer of cover material. A municipal solid waste landfill that fails to satisfy the criteria contained in the proposed rules would be considered an open dump, which is prohibited under the Resource Conservation and Recovery Act.

The proposed rules would establish special performance conditions and specific siting restrictions for municipal solid waste landfills located near airports, floodplains, wetlands, fault areas, seismic impact zones, and unstable areas. The proposed rules also contain operating criteria for municipal solid waste landfills. In addition, the proposed rules would require the owner or operator of a municipal solid waste landfill unit to maintain records of ground water monitoring and testing, gas monitoring results, inspections, training procedures, notification procedures, and closure and postclosure care plans.

The proposed rules would require an owner or operator of a municipal solid waste landfill unit to conduct two phases of postclosure care for a landfill. The first phase would be for at least 30 years, and the second phase of postclosure care would have to consist of at least ground water monitoring and gas monitoring, the length of which would be determined by the state.

The proposed rules also contain criteria for financial assurance for the closure of a municipal solid waste landfill. The proposed rules include ground water monitoring and corrective action requirements

to ensure that ground water contamination at new and existing municipal landfills will be detected and cleaned. The proposed rules would require the state to establish a design goal for new municipal solid waste landfill units which must consider at least the hydrologic characteristics of the facility and surrounding land, the climatic factors of the area, the volume and physical characteristics of the leachate, proximity of ground water users, and the quality of ground water.

Underground Storage Tanks

House Bill No. 1297 (1989) established a petroleum release compensation fund. Under the bill, motor vehicle and special fuels dealers are required to pay a tariff of 9/40ths of a cent per gallon on gasoline, kerosene, tractor fuel, heating oil except liquefied petroleum, and diesel fuel. An owner or operator of aboveground storage tanks is required to pay an annual registration fee of \$10 per tank and an owner or operator of underground storage tanks must pay an annual registration fee of \$25 per tank. The tariff, registration fees, expenses recovered by the administrator of the fund, and money received from other sources must be deposited in the petroleum release compensation fund. The fund is administered by the manager of the state fire and tornado fund (who, under NDCC Section 26.1-22-02, is the Commissioner of Insurance).

The revenue in the fund is to be used for reimbursement of costs of tank owners or operators incurred in minimizing, containing, eliminating, mediating, mitigating, or cleaning up a release of petroleum. Reimbursable corrective action does not include the repair or replacement of damaged equipment. If an application for reimbursement is approved by the administrator of the fund, an eligible owner or operator may receive 90 percent of the costs of corrective action that are greater than \$7,500 and less than \$100,000. An owner or operator of storage tanks is required to notify the State Department of Health and Consolidated Laboratories of a release and take corrective action when a release occurs.

Pursuant to the Resource Conservation and Recovery Act, the Environmental Protection Agency has established regulations relating to the design, construction, and installation of new underground storage tanks and the upgrading of existing underground storage tanks. The Environmental Protection Agency also has adopted rules for the approval of state underground storage tank programs. The requirements for state programs for existing and new underground storage tank systems must be no less stringent than the federal requirements. A state with an approved program may administer the state program in lieu of the federal program and have primary enforcement responsibility with respect to the requirements of the approved program.

The Environmental Protection Agency has also established financial responsibility requirements for owners or operators of petroleum underground storage tank systems. The rules relating to underground storage tanks do not apply to farm or residential tanks of not more than 1,100 gallons capacity used for storing motor fuel for noncommercial purposes.

Testimony

The committee reviewed a report of the findings of the North Dakota Waste Management Task Force established by the Governor in 1988. The task force developed the following general recommendations:

1. An increase in the State Department of Health and Consolidated Laboratories' resource base would facilitate development of an integrated waste management program in the state.
2. A study of municipal wastes should be performed to define potential resources and to address leaching characteristics in the waste stream.
3. A comprehensive economic analysis of a proposed integrated waste management program must be performed.
4. A comprehensive environmental educational program should be developed.
5. The waste management problem presents numerous business opportunities that should be considered.
6. The task force should be continued for the next two years.

The director of the State Department of Health and Consolidated Laboratories' Division of Waste Management organized an informal task force to continue the work of the Governor's task force and to develop a statewide solid waste management plan. The plan suggested that legislation should be considered implementing the following concepts:

1. Creation of regional solid waste management authorities in which counties and cities would be required to participate.
2. Revision of state laws relating to littering and open burning.
3. Creation of a state solid waste fund.
4. Establishment of a state goal for waste reduction.
5. Establishment of certification of landfill operators.
6. Establishment of increased penalties for non-compliance with the Solid Waste Management and Land Protection Act.
7. Establishment of specific requirements for large volume landfills.

The committee received testimony from a representative of the Economic Development Commission who testified that the potential for economic development opportunities in nonhazardous solid waste disposal are limited because of the relatively small waste stream in the state. However, economic development growth could be encouraged with government grants, technical assistance, and preferential tax treatment.

Representatives from the recycling industry testified that state mandated recycling is not an answer to the solid waste problems. In order for mandatory recycling programs to be economically feasible, there must be a sufficiently large source of recyclable materials. Because of the low population of the state and the relatively small waste stream, mandatory recycling programs and beverage container deposit legislation are not economically feasible.

Testimony from local government representatives indicated that the increased cost of operating and

maintaining landfills is becoming a burden on local governments. In the last few years, the number of landfills in the state has decreased by about 50 percent. It is expected that within the next two years the number of landfills in the state may be reduced to fewer than 20. Several counties and cities throughout the state have formed task forces to examine the feasibility of establishing regional landfills. Because of the proposed federal regulations relating to municipal landfills, it is estimated that a landfill will have to serve at least 100,000 persons in order to be economically feasible.

Committee Considerations

The committee considered a bill draft that would have required each city and county to participate in a comprehensive solid waste management plan that addresses the city's or county's ability to dispose properly of the solid waste generated within the city or county. The bill draft also would have provided that the governing body of cities, townships, counties, and agencies could join in a regional solid waste management agency or program. Under the bill draft, the Department of Health and Consolidated Laboratories would have been authorized to establish boundaries for regional solid waste management districts.

The committee considered a second version of the bill draft that required each city and county to participate in a comprehensive solid waste management plan that addresses the city's or county's ability to dispose properly of the solid waste generated within the city or county, problems associated with duplicative or overlapping local waste management efforts, establishment of regional solid waste management districts, and other matters determined necessary by the Department of Health and Consolidated Laboratories. The bill draft also provided that the governing body of each city, county, and township could join in a regional solid waste management agency or program. The bill draft also provided that if a city, county, or township did not join a regional solid waste management agency or program, the department could require the city, county, or township to participate in an existing regional agency or program, or could establish a regional agency or program in which the city, county, or township would have to participate.

Committee members generally agreed that local governments should be permitted to join regional solid waste management agencies or programs voluntarily. However, they also indicated that the department should be given the authority to require local governments to participate in regional agencies or programs if necessary. Representatives of the department testified that they would be reluctant to require local governments to join regional agencies or programs and would do so only if absolutely necessary.

The committee considered a bill draft that required the Department of Health and Consolidated Laboratories, after consulting with the Superintendent of Public Instruction, to develop, collect, and disseminate to the public educational material designed to encourage voluntary solid waste reduction, source separation, reuse of materials, recycling

efforts, and appropriate management of solid waste. The educational material was required to encourage by 1995 at least a 10 percent reduction in volume of solid waste deposited in landfills, by 1997 at least a 25 percent reduction, and by 1999 at least a 50 percent reduction. The bill draft provided for an appropriation of \$120,000.

Proponents of the bill draft stated that solid waste management education should begin with children in school. In addition, they contended that the educational program should be designed to provide information to the entire public.

The committee considered a bill draft that provided for the certification of municipal landfill operators. The bill draft also required the owner or operator of a solid waste management facility accepting more than an average of 300 tons of solid waste per day to submit annually to the Department of Health and Consolidated Laboratories a detailed assessment of the facility. The assessment had to include an analysis of the environmental, economic, and sociological effects of the facility. In addition, the bill draft increased the penalty for a violation of the Solid Waste Management and Land Protection Act from \$300 per day to \$1,000 per day.

Supporters of the bill draft contended that landfill operators should be certified because of strict operation standards contained in the proposed federal regulations. Representatives of the Department of Health and Consolidated Laboratories stated that the provisions of the bill draft relating to facility assessments would only apply to very large facilities. The Fargo landfill is the only facility in the state that accepts close to an average of 300 tons of solid waste per day.

The committee considered a bill draft that would have established a solid waste management fund for the primary purpose of providing assistance to businesses promoting the development of markets for recycled products. The revenue for the fund would have been generated by imposing a \$1 fee on lead acid batteries sold in the state, a \$1 fee on pneumatic or solid tires sold in the state, and a two-cent-per-quart fee on motor oil sold in the state.

The committee considered a second bill draft that provided for the establishment of a solid waste management fund for the primary purpose of providing assistance to business for the development of markets for recycled products. The revenue for the fund would be generated by imposing on the owner or operator of a municipal landfill a fee of \$1-per ton of solid waste accepted at the landfill during the previous month.

Proponents of the bill draft that would have established a solid waste management fund funded by the fees on lead acid batteries, tires, and motor oil argued that the people who use products that are particularly difficult to dispose of should pay extra for those products. Opponents of the bill draft contended that everyone who places wastes in the waste stream should contribute to the solid waste management fund. Therefore, it was contended the bill draft that provides for a \$1 per-ton fee on solid waste deposited in landfills is the better option. Opponents of that proposal argued that the proposal would result in higher garbage pickup costs for everyone, including

persons who dispose of very little waste and persons who cannot afford to pay higher pickup fees. In addition, they argued that the large landfill operators would contribute the most to the fund and likely would receive the least benefit.

Although cities, counties, and townships are permitted under NDCC Chapter 54-40 to enter into agreements for joint or cooperative action, including solid waste management functions, some committee members indicated that a mechanism should be established for the establishment of solid waste management authorities and that regional solid waste management authorities should be established and operated only in accordance with that mechanism. The committee considered a bill draft that provided for the establishment of solid waste management authorities by cities, counties, or townships. The bill draft provided that two or more cities, counties, or townships could establish a regional solid waste management district or program only in accordance with the procedure established in the bill draft.

Pursuant to the recommendation in the statewide solid waste management plan, the committee considered a bill draft that established a prohibition on littering and open burning and repealed various provisions relating to littering. Currently, NDCC Sections 20.1-01-25, 24-12-03, and 39-10-59 all contain prohibitions on littering and the deposit of refuse and prescribe different penalties. The proposed draft consolidates the various provisions into one section.

The committee considered combining the bill draft relating to certification of municipal landfill operators and assessments of large volume solid waste management facilities with the bill draft relating to the prohibition on littering and open burning. However, the committee determined that each bill draft should be considered separately.

Recommendations

The committee recommends House Bill No. 1058 that requires each county and city to participate in a comprehensive solid waste management plan. The bill also provides that the governing bodies of cities, townships, and counties could join in a regional solid waste management agency or program. If a city, county, or township does not join in a regional solid waste management agency or program, the Department of Health and Consolidated Laboratories could require the city, county, or township to participate in an existing regional agency or program, or could establish a regional agency or program in which the city, county, or township must participate.

The committee recommends House Bill No. 1059 that requires the Department of Health and Consolidated Laboratories to develop and disseminate to the public educational material designed to encourage voluntary solid waste reduction, source separation, reuse of materials, recycling efforts, and appropriate management of solid waste. The bill also encourages a 10 percent reduction in volume of solid waste deposited in landfills by 1995, a 25 percent reduction by 1997, and at least a 50 percent reduction by 1999. The bill appropriates \$120,000 to the Department of Health and Consolidated

Laboratories for administering the educational program.

The committee recommends House Bill No. 1060 that provides for the certification of municipal landfill owners and operators. The bill also requires the owner or operator of a solid waste management facility accepting more than an average of 300 tons of solid waste per day to submit annual detailed assessments of the environmental, economic, and sociological effects of the facility. The bill also increases the penalty for a violation of the Solid Waste Management and Land Protection Act from \$300 per day to \$1,000 per day.

The committee recommends House Bill No. 1061 that establishes a solid waste management fund for the primary purpose of providing assistance to businesses for the development of markets for recycled products. The bill provides that the Bank of North Dakota is to administer the fund and allocate at least 75 percent of the moneys in the fund for distribution to political subdivisions that apply for grants or low interest loans to businesses for development of markets for recycled products and businesses involved in waste reduction and resource recovery activities. The bill provides that the remaining moneys in the fund must be used to provide grants or low interest loans to municipal landfill owners or operators to assist in the closure of municipal landfills, to persons for studies of the environmental effects associated with various aspects of solid waste disposal and of technologies that would enhance resource recovery, and to assist persons to establish projects designed for the recycling of waste oil, lead acid batteries, and tires. The bill provides that by the 20th day of each month the owner or operator of a municipal landfill would have to pay to the State Tax Commissioner a fee of \$1 per ton of solid waste accepted at the landfill during the previous month. The bill appropriates from the solid waste management fund \$1 million to the Bank of North Dakota for the purpose of administering the fund for the biennium beginning July 1, 1991.

The committee recommends House Bill No. 1062 that provides a mechanism for the establishment of solid waste management authorities. The bill provides that the governing bodies of two or more cities, counties, or townships could by joint resolution create a regional solid waste management authority. The bill requires the governing bodies of the political subdivisions participating in a regional solid waste management authority to appoint the commissioners of the authority. The bill establishes the powers of a regional solid waste management authority, including the power to appropriate and expend moneys, to provide solid waste management services for political subdivisions participating in the authority, to construct and operate facilities for the management of solid waste, and to regulate the handling of solid waste within the authority. The bill allows regional solid waste management authorities to borrow money and issue bonds and to certify to the governing bodies participating in the authority the amount of tax to be levied by each political subdivision annually. The bill allows counties, cities, and townships to levy up to three mills for a regional solid waste management authority. The bill provides that two or more

political subdivisions could establish a regional solid waste management district or program only in accordance with the bill and repeals NDCC Section 23-29-06, which provides that cities, counties, and townships may join in a regional solid waste management agency or program.

The committee recommends House Bill No. 1063 that establishes a new prohibition on littering and open burning. The bill provides that a person littering or engaging in open burning is guilty of an infraction. However, if the litter discarded amounted to more than one cubic foot in volume or consisted of furniture or an appliance, the offense is a Class B misdemeanor. The bill also repeals existing provisions relating to littering.

STATE AND FEDERAL GOVERNMENT OWNERSHIP OF LAND STUDY

Background

The study of the impact of government land acquisitions was proposed as a result of the defeat of Senate Bill No. 2433 (1989). That bill would have established a wetlands acquisition evaluation board. The board would have been required to conduct comprehensive reviews and evaluations of proposed wetland acquisitions by the state, state agencies, political subdivisions, and the United States or any agency of the United States for waterfowl production areas, wildlife refuges, or other property for wildlife or waterfowl purposes. The bill also would have prohibited the federal government, the state, and county agencies from acquiring any interest in land for wildlife conservation purposes until July 1, 1999, or until the wetlands acquisition evaluation board formulated its final recommendations on whether the Governor or any other state or local entity having the authority to do so should approve the acquisition.

State and Federal Law

Generally, states and local governments are prohibited from imposing taxes upon the property of the United States and its instrumentalities without congressional permission. Section 1 of Article XIII of the Constitution of North Dakota provides that "no taxes shall be imposed by this state on lands or property therein, belonging to, or which may hereafter be purchased by the United States or reserved for its use." However, Section 5 of Article X of the Constitution of North Dakota provides that property of the United States "to the extent immunity from taxation has not been waived by an act of Congress" is exempt from taxation. That section also provides that "property of the state . . . to the extent immunity from taxation has not been waived by an act of the legislative assembly" is exempt from taxation.

North Dakota Century Code Section 57-02-08 provides that property owned exclusively by the United States is exempt from taxation unless the state and its political subdivisions are authorized by the laws of the United States to tax the property. That section also provides that all property owned by the state except land contracted to be sold by the state is exempt from taxation.

North Dakota Century Code Section 57-02-08.4 provides a property tax exemption for the owner of a

wetland if the owner files with the county director of tax equalization a legal description of the wetland for which the exemption is claimed and an agreement not to drain, fill, pump, concentrate water in a smaller and deeper excavation in the wetland basin, or alter the physical nature of the wetland in any manner that reduces the wetland's ability to function as a natural system. When a wetland is drained or altered so that the land no longer qualifies for the wetland exemption, the land is subject to additional taxes that would have been assessed if the property had not qualified for a wetland exemption.

North Dakota Century Code Section 57-02-08.5 provides for payments to counties in the sum of property taxes due on wetlands exempt under Section 57-02-08.4. The county treasurer upon receipt of the payment from the State Treasurer is required to apportion and distribute payments to the county and local taxing districts on the basis on which the general real estate tax for the preceding year is apportioned and distributed. If the State Tax Commissioner does not certify to the county auditor of each county before August 1 of the taxable year that funds are available in the state treasury which may be used for wetlands tax exemption payments, property tax exemptions may not be granted under Section 57-02-08.4.

North Dakota Century Code Section 57-02.1-02 requires the State Game and Fish Commissioner to make annual payments, subject to legislative appropriations, to counties in which real property owned by the state or real property leased or held by lease or license from the United States or a political subdivision of the state, and controlled by the State Game and Fish Department in lieu of taxes that would otherwise have been available to counties if the real property were not owned by the state, the United States, or a political subdivision. The Legislative Assembly appropriated \$400,000 to the Game and Fish Department for payments in lieu of taxes for the 1989-91 biennium.

North Dakota Century Code Section 57-02.1-02 requires county auditors to assess all property for which payments must be made by the State Game and Fish Commissioner under Section 57-02.1-02 to determine the amount of the payments. The property must be assessed and valued in the same manner as other real property, except that improvements to the real property may not be considered in the valuation. The county auditor in the county where the property is located is required to give written notice to the Game and Fish Commissioner and the State Tax Commissioner of the value placed upon the property, subject to valuation by the county board of equalization.

North Dakota Century Code Section 57-02.1-04 requires the State Board of Equalization to equalize the value placed upon tracts of land under Chapter 57-02.1. Upon receipt of the decision of the State Board of Equalization, the Game and Fish Commissioner is required to compute the payment due to each county by extending the mill levies that apply to other taxable property in the taxing districts in which the property is located. The commissioner is then required to remit to the counties the amount due. Under NDCC Section 57-02.1-06, the revenue to

which the county level of government is entitled is determined according to the proportion the county mill levy on other real property bears to the total mill levies on real property of each taxing district in which the property is located. The revenue remaining after apportionment to the counties must be apportioned and distributed among the various taxing districts in which the property for which state payments were made is located. The county auditor must distribute the payments on a pro rata basis according to the proportion the assessed value of the property in each taxing district bears to the total assessed value of all property for which payments are made in the county. The amount of revenue allocated to each taxing district is to be divided among the various funds of the district according to the proportion that the mill levy for any fund bears to the total of all mill levies spread against other property in the taxing district that is assessed and taxed on an ad valorem basis.

Amount of Land Owned By the State and Federal Governments in North Dakota

According to statistics published by the United States Bureau of Land Management in 1987, the federal government owns almost two million acres of land in North Dakota. Of that total, over one million acres are under the control of the United States Forest Service and over 400,000 acres are owned by the United States Fish and Wildlife Service. The property owned by the federal government in North Dakota accounts for approximately four percent of the total acreage in the state.

The amount of land owned by the state is difficult to determine. According to records of the North Dakota Parks and Recreation Department, the department owns and leases over 15,000 acres. In addition, there are approximately 14,000 acres under the control of the State Forest Service. According to data from the North Dakota Game and Fish Department, the department owns over 73,000 acres and leases over 77,000 acres. As of June 30, 1987, according to the Board of University and School Lands, state school land acreage in the state totaled over 700,000 acres.

The Federal Bureau of Land Management reports the federal government made over \$500,000 in payments to the state of North Dakota for distribution to political subdivisions in lieu of taxes in fiscal year 1988. State payments to counties in lieu of property taxes for wildlife management areas totaled almost \$175,000 in 1987, according to records of the State Game and Fish Department.

Testimony and Committee Considerations

Because government land acquisitions have removed large amounts of property from local tax rolls, local governments are seeking ways to prevent government land acquisitions or at least obtain reimbursement for the lost property tax collections. Local government representatives argued that the local governments continue to provide services that benefit the federal and state government-owned land and should receive reimbursement for those services. Testimony received by the committee revealed that federal government in lieu of tax payments for property owned by the federal government are not for

the full amount of taxes that would have been due on the property. Congress has only appropriated about 60 percent of the funds necessary for payments in lieu of taxes on federal property.

Representatives of county governments testified that their main concern was to convince Congress to provide full appropriations for payments in lieu of taxes on federal lands. In addition, there were concerns expressed regarding acquisitions of land by the federal and state governments when local landowners also were attempting to purchase land.

Testimony received by the committee disclosed that several groups are working with the North Dakota Congressional Delegation in attempting to persuade Congress to appropriate 100 percent funding for payments in lieu of taxes. The committee was also informed that the interim Game and Fish Committee had sent letters to Congress and the President urging 100 percent funding for payments in lieu of taxes.

Conclusion

Committee members generally expressed support for the efforts to obtain 100 percent funding from the federal government for payments in lieu of taxes.

ACQUISITION AND HOLDING OF LAND BY THE STATE STUDY

Background

The study of state ownership of land was proposed because of concerns regarding the holdings of the Bank of North Dakota and the Board of University and School Lands. North Dakota Century Code Chapter 57-02.3, enacted by the 1989 Legislative Assembly, requires the Board of University and School Lands to make payments in lieu of taxes to political subdivisions for property obtained by the state as a result of foreclosure of a mortgage to the Bank of North Dakota. Because of that chapter, the committee limited the scope of its study and only addressed the ownership and leasing of real property by the Board of University and School Lands.

The Enabling Act of Congress, which provided for the division of Dakota Territory into North Dakota and South Dakota, granted the 16th and 36th sections of land in each township to the state "for the support of common schools." Article IX of the Constitution of North Dakota governs the holding of lands granted by the United States to the state for the support of common schools. Section 3 of Article IX provides that subject to Article IX and any law passed by the Legislative Assembly, the Board of University and School Lands has control of the appraisal, sale, rental, and disposal of all school and university lands.

Section 8 of Article IX of the Constitution of North Dakota grants the Legislative Assembly the authority to provide by law for the leasing of lands granted to the state for educational and charitable purposes. However, a lease granted under Section 8 may not be for a period longer than five years. The lands leased may be used only for pasturage and meadow purposes, except land that was under cultivation at the time Section 8 was enacted may be used for purposes other than pasturage and meadow.

North Dakota Century Code Section 15-01-02 provides that the Board of University and School Lands has full control of the selection, appraisal, rental, sale, disposal, and management of lands received from the United States or from any other source for the support and maintenance of the common schools, lands which fall to the state by escheat, lands received from the United States or any other source for the maintenance of the educational, penal, or charitable institutions, and all lands acquired by the state through the investment of the permanent schools funds of the state as the result of mortgage foreclosure or otherwise. That section also provides that any gift to the state not specifically appropriated to any other purpose is considered as a gift for the support and maintenance of the common schools.

State Property Exempt From Taxation

Section 5 of Article X of the Constitution of North Dakota provides that property of the state is exempt from taxation unless the Legislative Assembly waives immunity from taxation. North Dakota Century Code Section 57-02-08 provides that all property owned by the state except lands contracted to be sold from the state are exempt from taxation. Also exempt from taxation is any building located on land owned by the state if the building is used at least in part for academic or research purposes by students and faculty of a state institution of higher education.

Testimony and Committee Considerations

The commissioner of University and School Lands testified that the Board of University and School Lands holds about 657,000 acres of original grant land in trust for the schools and other state institutions. In addition, the board holds about 55,000 acres of property acquired as a result of foreclosures on farm mortgages during the 1920s and 1930s. Of that 55,000 acres, about 18,000 acres were cultivated during the time it was held in private ownership. Because it was acquired by the state as cultivated acreage, it has remained in that status and is leased for crop production. Under NDCC Section 57-02-26, the cultivated property may be taxed to the holder of a lease on the property as if the leaseholder actually owned the underlying property. Pursuant to that authorization, about nine counties are assessing a tax on leaseholders of cultivated lands.

In January 1990 the Board of University and School Lands began implementation of a five-year plan to increase rental rates on property leased from the board. The committee received a proposal from the North Dakota Association of Counties which required the Board of University and School Lands to make payments in lieu of taxes to political subdivisions. Under the proposal, the board would be required to phase in the payments over the same period in which the board increases the rental rates on leased property.

The proposal was made as a means to reimburse the local taxing entities that provide governmental services to the leased property and for the benefit of the leaseholders. Because the payments in lieu of taxes would be phased in as the rental amounts increase, the revenue to the common schools trust fund would not decrease. In addition, because school district tax levies generally are the highest local tax levies, the school districts would receive the majority of the payments in lieu of taxes.

Opponents of the proposal argued that the use of revenue from school lands for purposes other than the maintenance of the common schools is prohibited by the Constitution of North Dakota. Section 2 of Article IX of the Constitution of North Dakota states that the interest and income of the common schools trust fund "shall be faithfully used and applied each year for the benefit of the common schools of the state and no part of the fund shall ever be diverted, even temporarily, from this purpose or used for any other purpose whatever than the maintenance of common schools as provided by law."

In response to a request from the committee, the Legislative Council chairman requested an Attorney General's opinion regarding the constitutionality of requiring the Board of University and School Lands to use rental income from original grant lands to make in lieu of tax payments to political subdivisions. According to an opinion issued by the Attorney General, rental income from original grant lands may be used to make in lieu of tax payments to political subdivisions, provided the payments fund services beneficial to original grant lands (North Dakota Attorney General's Opinion 90-24, October 8, 1990).

The committee considered a bill draft that reflected the proposal submitted by the North Dakota Association of Counties. The bill draft required the Board of University and School Lands to make annual payments, subject to legislative appropriations, to counties for real property owned by the Board of University and School Lands and which is leased from the board and is not subject to ad valorem taxes.

Recommendation

The committee recommends Senate Bill No. 2077 to require the Board of University and School Lands to make payments in lieu of taxes to political subdivisions for real property leased from the board which is not subject to ad valorem taxes. The payments would be phased in over a four-year period beginning with calendar year 1991. The county auditor of a county receiving payments from the board would be required to allocate the revenue to each taxing district within the county according to the proportion that the taxing district's mill levy on other real property bears to the total mill levies of all taxing districts on other real property in the taxing districts.

REGULATORY REFORM REVIEW COMMISSION

The Regulatory Reform Review Commission is established by North Dakota Century Code (NDCC) Section 49-21-22. The commission is directed by statute to review the operation and effect of NDCC Sections 49-02-01(2), 49-21-01, 49-21-01.1(6), 49-21-01.2, 49-21-01.3, 49-21-01.4, 49-21-02.1, 49-21-02.2, 49-21-04 through 49-21-07, 49-21-09, and 49-21-22, the Telecommunications Regulatory Reform Act, on an ongoing basis during the 1989-90, 91-92, and 93-94 legislative interims. The commission is required to submit reports regarding its operation and effect to the Legislative Council in 1990, 1992, and 1994.

Membership of the commission is established by Section 49-21-22 as the members of the Public Service Commission, two members of the Senate appointed by the President of the Senate, and two members of the House of Representatives appointed by the Speaker of the House of Representatives. The Public Service Commission is required to provide technical assistance to the Regulatory Reform Review Commission, and the Legislative Council is required to provide staff services.

Commission members were Representative Rod Larson (Chairman); Senators Evan E. Lips and Rick Maixner; and Public Service Commissioners Dale V. Sandstrom, Bruce Hagen, and Leo Reinbold. Representative Dan Ulmer, prior to his resignation from office in October 1990, was a member of the commission.

The report of the commission was submitted to the Legislative Council at the biennial meeting of the Council in November 1990. The report was adopted for submission to the 52nd Legislative Assembly.

1989 SENATE BILL NO. 2320

Senate Bill No. 2320, enacted by the 1989 Legislative Assembly, exempts telecommunications companies and services from rate or rate of return regulation by the Public Service Commission unless the telecommunications company notifies the commission that it wants to be regulated in this manner. For telecommunications companies with over 50,000 end users, the election not to be exempt from rate and rate of return regulation is a one-time, irrevocable decision. Although the Legislative Assembly has exempted both nonessential telecommunications service, i.e., service that is not included within the definition of essential telecommunications service, and essential telecommunications service from rate or rate of return regulation by the commission, essential telecommunications service is still subject to a price cap based upon the essential telecommunications price factor. The essential telecommunications price factor is the annual change in a company's input cost index reduced by 50 percent of the company's productivity incentive adjustment. The input cost index is a comparison of the cost of all goods and services purchased by a company with the cost of the same goods and services in a base year. The productivity incentive adjustment is total output of services

and products divided by the total inputs to produce those services and products.

Essential telecommunications service is service that is necessary for access to interexchange telecommunications companies and two-way switched communications for both residential and business service within a local exchange area. A charge based on usage may not be required for residential and business local exchange service. Essential telecommunications services include access; any new product or service not existing on July 1, 1989, but deemed essential by the Public Service Commission after notice and hearing in accordance with NDCC Chapter 28-32; billing and collection of the billing company's own essential telecommunications services; directory listing and local exchange directory assistance; emergency 911 services and operator assistance in local exchange areas in which emergency 911 service is not available; except as provided in NDCC Section 49-02-01.1, mandatory, flat-rate extended area service to designated nearby local exchange areas; service connection to the local exchange network; telecommunications service provided to allow transmission service and termination between an interexchange company's premises and the local exchange central office switch for the origination or termination of the interexchange company's telecommunications services; and transmission service between the end users premises and the local exchange central office switch including signaling service such as touchtone used by end users for essential telecommunications services.

IMPLEMENTATION OF 1989 SENATE BILL NO. 2320 1990 Essential Telecommunications Price Factor

The essential telecommunications price factor is the annual change in a company's input cost index (comparison of the cost of all goods and services purchased by a telecommunications company to the cost of the same goods and services in a base year) reduced by 50 percent of that company's productivity incentive adjustment (a telecommunications company's expected average annual change in the measure of a telecommunications company's total output of services and products to the total amount of input of resources used to produce those services and products). The base year selected by the Public Service Commission is July 1, 1987, to June 30, 1988. The Public Service Commission adopted the gross national productivity price index (GNPPI) as the input cost index (ICI).

Concerning the productivity incentive adjustment, the Regulatory Reform Review Commission learned that the Public Service Commission had received three recommended values for this element of the essential telecommunications price factor formula. In hearings to determine the 1990 essential telecommunications price factor U S West Communications advocated a productivity incentive adjustment of 3.13 percent; an independent group of telephone companies consisting of CONTEL of North Dakota, Inc.,

Midstate Telephone Company, Northern States Power Company, BEK Telephone Mutual Aid Corporation, Consolidated Telephone Cooperative, Dakota Central Rural Telephone Cooperative Association, Inter-Community Telephone Company, Northwest Communications Cooperative, Polar Communications Cooperative, Polar Communications Mutual Aid Corporation, Reservation Telephone Cooperative, Souris River Telephone Mutual Aid Cooperative, United Telephone Mutual Aid Corporation, and West River Mutual Aid Telephone Corporation, i.e., essentially all telecommunications companies operating in North Dakota other than U S West Communications, advocated a productivity incentive adjustment of one percent; and Professor Larry L. Dobesh, Department of Economics, University of North Dakota, advocated a productivity incentive adjustment of seven percent. Professor Dobesh has been retained by the Public Service Commission under a research grant through the University of North Dakota to assist the Public Service Commission in implementing Senate Bill No. 2320. Based upon the information presented at the hearings on the 1990 essential telecommunications price factor, the Public Service Commission found that the productivity incentive adjustment should be based on a reasonable balance of historical productivity gains and future expectations of productivity. The Public Service Commission adopted a productivity incentive adjustment of 5.25 percent. The productivity incentive adjustment of 5.25 percent reflects historical industry productivity halfway between the four percent and 5.5 percent identified by Bureau of Labor Statistics' reports and includes a measure for future expectations due to technological advances and institutional factors.

Using a productivity incentive adjustment for 1990 of .0525 the Public Service Commission set the essential telecommunications price factor (ETPF) for 1990 at 1.02005.

$$\begin{aligned} \text{ICI} - (.50 \times \text{PIA}) &= \text{ETPF} \\ 1.0463 - (.50 \times .0525) &= \text{ETPF} \\ 1.0463 - .02625 &= \text{ETPF} \\ 1.0463 - .02625 &= 1.02005 \end{aligned}$$

Thus, the essential telecommunications price factor for 1990 is 1.02005.

Use of Rate of Return to Monitor Rates Set Using the Essential Telecommunications Price Factor

The Regulatory Reform Review Commission learned that the Public Service Commission and U S West Communications had disagreed during the hearings on the 1990 essential telecommunications price factor on whether the Public Service Commission could implement a review process comparing rate of return with rates based upon the essential telecommunications price factor established by the Public Service Commission. Although the Public Service Commission may not set rates based upon rate of return it may still request telecommunications companies subject to the authority of the Public Service Commission to submit information that the Public Service Commission could utilize in determining whether rates set under 1989 Senate Bill

No. 2320 using the essential telecommunications price factor are comparable to what the rates would be if the telecommunications companies remained under rate of return regulation. In its findings of fact concerning the 1990 essential telecommunications price factor, the Public Service Commission found that a review of the earnings of investor-owned telecommunications companies subject to price caps will benefit both the Public Service Commission and the Regulatory Reform Review Commission and said the Public Service Commission will review earnings to monitor the effect of the law but will not set any prices based on rate of return. The members of the Regulatory Reform Review Commission support the finding that the Public Service Commission may require telecommunications companies to submit sufficient information in order to enable the Public Service Commission to determine how rates determined under 1989 Senate Bill No. 2320 would compare with rate of return rates calculated under prior law.

INCENTIVE REGULATION PLANS IN OTHER STATES

The Regulatory Reform Review Commission learned that at least 19 other states and New York for New York Telephone and Rochester Telephone have adopted some form of incentive plan to regulate telecommunications companies. The general profit sharing formula in these states gives the telecommunications company all profits up to 12 or 13 percent, splits the profits between 12 and 13 percent and 15 percent with one-half being retained by the company and one-half going to telecommunications consumers, and returns profits above 15 percent to telecommunications consumers. Under these incentive regulation plans basic rates for local services are usually either capped or frozen.

THE MINNESOTA INCENTIVE REGULATION PLAN FOR U S WEST COMMUNICATIONS

The Regulatory Reform Review Commission learned that the Minnesota Legislature had enacted legislation during its 1989 session allowing telecommunications companies to select alternative regulation and to propose an incentive regulation plan for the Minnesota Public Utilities Commission's approval. Under an incentive plan, a telecommunications company is allowed to earn amounts in excess of its authorized rate of return, subject to returning a specified percentage of excess earnings to its ratepayers. Telecommunications companies under the plan cannot raise their rates except under carefully limited circumstances. The Minnesota incentive regulation plan is scheduled to sunset in August 1994.

On October 30, 1989, U S West Communications submitted a plan to the Minnesota Public Utilities Commission that required 50 percent of all earnings in excess of a 12.14 percent rate of return to be returned to ratepayers. Under the U S West Communications plan, basic rates would not be increased, and if rate of return fell below 9.14 percent, the company could file a rate case and the incentive plan would terminate. The plan included automatic pass throughs of certain governmentally imposed costs

and a proposed rural modernization plan for telecommunications in rural areas.

On June 7, 1990, the Minnesota Public Utilities Commission issued a decision allowing U S West Communications a 50 percent return of earnings between 13.74 percent and 18.5 percent return on equity. However, the plan required that all earnings above 18.5 percent be returned to ratepayers. Under the commission plan basic rates are frozen, but the company may request a rate case if its return on equity falls below 10 percent. The incentive plan expires if a rate case is requested. There are no automatic pass throughs under the Minnesota plan, but they are allowed if approved by the commission. U S West Communications must also file yearly reports on the progress of its rural modernization program.

AD HOC COMMITTEE ON 1989 SENATE BILL NO. 2320

Due to the complexities surrounding the implementation of Senate Bill No. 2320, the Public Service Commission formed an Ad Hoc Committee on Senate Bill No. 2320 to advise the Public Service Commission on several issues. Among the issues studied by this committee were the definition of essential services as used in Senate Bill No. 2320, whether there should be one industrywide price factor or different price factors for different telecommunications companies, how to quantify the productivity incentive adjustment, whether the 50 percent limitation on the productivity incentive adjustment is an appropriate factor to include in determining the essential telecommunications price factor, and whether to delete the requirement that company contracts be filed with the Public Service Commission as this raises problems associated with protecting trade secrets. Representatives of U S West Communications, AT&T, MCI Telecommunications Corporation, Souris River Telephone Cooperative, the Independent Telephone Company Group, the North Dakota Cable Television Association, the North Dakota Association of Telephone Cooperatives, Public Service Commission staff, American Association of Retired Persons, as well as other individuals and entities, including Professor Dobesh, participated in this process.

Representatives of U S West Communications opposed any legislative changes in Senate Bill No. 2320. This opposition was based on the fact that the law became effective July 18, 1989, and thus had not been in effect long enough for anyone to know what changes, if any, are necessary.

Representatives of AT&T also stated that any legislative changes to Senate Bill No. 2320 would be premature and that any problems implementing the regulatory reform provisions of Senate Bill No. 2320 can be resolved administratively within the framework of the current statute.

Since small telephone companies have an option to opt out of the provisions of Senate Bill No. 2320 and all existing contracts between U S West Communications and independent telephone companies are secure following the enactment of this legislation, Souris River Telephone Cooperative did not support any legislative changes to Senate Bill No. 2320 at this time.

Representatives of the Independent Telephone Company Group said there is no consensus for amending the provisions of Senate Bill No. 2320 and thus the Independent Telephone Company Group did not propose any amendments to the bill or to any provisions of NDCC Title 49 affecting telecommunications.

Representatives of the North Dakota Cable Television Association reiterated their opposition to Senate Bill No. 2320 but did not favor that any substantive changes to the bill be considered by the 1991 Legislative Assembly.

Professor Dobesh presented five proposals:

1. The Legislative Assembly should firmly establish the intent for telecommunications regulation in North Dakota while leaving the technical methods for accomplishing this goal to the Public Service Commission. This would allow the Public Service Commission to implement this complex and technical process supported by the general intent of the Legislative Assembly.
2. The Public Service Commission should be required to implement an earnings-sharing plan. This is the incentive regulation plan of choice in other states.
3. The Legislative Assembly should require traditional rate of return regulation for a limited number of essential services not subject to competition and that all remaining services be completely deregulated.
4. The 50 percent factor should be removed from the essential telecommunications price factor and the North Dakota Public Service Commission should be authorized to rule on basket pricing. Under basket pricing, the price of individual services may be changed by more or less than the price factor as long as the aggregate annual price change for the basket of services does not exceed the price factor.
5. There should be complete price deregulation.

Representatives of the North Dakota Association of Telephone Cooperatives did not propose any changes to 1989 Senate Bill No. 2320.

Members of the Public Service Commission staff presented several proposals for consideration by the ad hoc committee. Among the proposals were a clarification of the definition of essential services and amendment of the definitions of input cost index, productivity incentive adjustment, and essential telecommunications price factor contained in Senate Bill No. 2320 to allow the Public Service Commission to determine whether one factor or more than one factor is appropriate without the potentially negative effect of using a company specific price factor; the elimination of the 50 percent factor in determining the essential telecommunications price factor; revision of the definition of services; and the use of rate of return reviews to monitor the effect of the telecommunications regulatory reform provisions of Senate Bill No. 2320.

Representatives of the American Association of Retired Persons suggested that Senate Bill No. 2320 should only remain in effect for a period of five years. Under the American Association of Retired Persons proposal, the Public Service Commission would be required to compare the effects of the new regulatory

environment with what would have occurred under rate of return regulation during this five-year period. Also, telecommunications companies would be required to supply all necessary data and perform necessary studies which would aid the Public Service Commission staff and the Public Service Commission evaluate the effects of Senate Bill No. 2320. In addition, representatives of the association said the Public Service Commission should adopt measures to minimize risk to both telecommunications companies and ratepayers including profit ceilings and profit floors for telecommunications companies that elect to be regulated under Senate Bill No. 2320. The representatives also advocated that if the regulatory reform provisions of the telecommunications law are to remain in effect, then the productivity factor

should be greater than 100 percent of average productivity in order to provide telecommunications companies with an incentive to increase productivity. In addition they advocated that the Public Service Commission establish an average profit for the telecommunications industry and that telecommunications companies should be required to share profits above the average profit established by the Public Service Commission with their ratepayers.

Conclusion

The commission makes no recommendation concerning the operation and effect of the Telecommunications Regulatory Reform Act.

RETIREMENT COMMITTEE

The Retirement Committee has statutory jurisdiction over legislative measures that affect retirement programs. Under North Dakota Century Code (NDCC) Section 54-35-02.4, the committee is required to consider and report on legislative measures and proposals over which it takes jurisdiction and which affect, actuarially or otherwise, retirement programs of state employees or employees of any political subdivision. The committee is allowed to solicit draft measures from interested persons during the interim and is required to make a thorough review of any measure or proposal it takes under its jurisdiction, including an actuarial review. The statute requires that a copy of the committee's report accompany any measure affecting a public employees' retirement program which is introduced during a legislative session. A copy of the report must be attached to any retirement measure referred to a standing committee and amendments to those measures during a session must also be accompanied by a committee report. Under the statute, legislation enacted in contravention of these requirements is invalid and benefits provided under that legislation must be reduced to the level in effect before enactment.

In addition to its statutory responsibility, the Legislative Council assigned three studies to the committee. Senate Bill No. 2030, enacted by the 1989 Legislative Assembly, required the Legislative Council to direct the Committee on Public Employees Retirement Programs to study options relating to the consolidation of various organizational and investment functions of the Public Employees Retirement System, Teachers' Fund for Retirement, and the State Investment Board. Senate Bill No. 2030 established the North Dakota State Retirement and Investment Office to coordinate the activities of the State Investment Board and the Teachers' Fund for Retirement, and transferred responsibility for investment of moneys of the Public Employees Retirement System from funding agents under contract with the Public Employees Retirement System to the State Investment Board. Senate Concurrent Resolution No. 4006 directed a study of issues and the feasibility of various options relating to the provision of adequate and affordable health insurance coverage for retired members of the Teachers' Fund for Retirement and the judges' retirement program, and for other retired state employees and officials not participating in the Public Employees Retirement System or the Highway Patrolmen's Retirement System. House Concurrent Resolution No. 3060 directed a study of the feasibility and desirability of providing level retirement benefits to all retirees under the Teachers' Fund for Retirement.

Committee members were Senators Joseph A. Satrom (Chairman), Bonnie Heinrich, and Clayton A. Lodoen and Representatives Dale Marks, Bob Martinson, Douglas G. Payne, and Adella J. Williams.

The report of the committee was submitted to the Legislative Council at the biennial meeting of the Council in November 1990. The report was adopted for submission to the 52nd Legislative Assembly.

CONSIDERATION OF RETIREMENT PROPOSALS

The committee is statutorily authorized to establish rules for its operation, including rules relating to the submission and review of proposals and the establishment of standards for actuarial review. The committee established April 1, 1990, as the deadline for submission of retirement proposals. The deadline was established to provide the committee and the consulting actuary of the affected retirement programs sufficient time to discuss and evaluate the proposals. The deadline for submission of proposals concerning early retirement submitted by the Public Employees Retirement System that received prior actuarial review was extended to July 1, 1990. The committee limited the submission of retirement proposals considered by it to legislators and those agencies entitled to the bill introduction privilege.

The committee reviewed each submitted proposal and solicited testimony from proponents, retirement program administrators, and other interested persons. Under NDCC Section 54-35-02.4 each retirement program is required to pay, from its retirement fund and without the need for a prior appropriation, the cost of any actuarial report required by the committee which relates to that retirement program. The committee referred proposals submitted to it to the affected retirement programs, which were requested to authorize the preparation of actuarial reports. Retirement programs use the actuarial services of the Martin E. Segal Company in evaluating the proposals. The committee obtained written actuarial information on each proposal.

In evaluating each proposal, the committee considered the proposal's actuarial cost impact, testimony by retirement program administrators and affected individuals, the impact on state general or special funds and on the affected retirement program, and other consequences of the proposal or alternatives to it. Based on these factors, each proposal received a favorable recommendation or an unfavorable recommendation. If the committee decided not to take jurisdiction over the proposal, the proposal was not acted on.

A copy of the actuarial evaluation and the committee's report on each proposal will be appended to the proposal and delivered to its sponsor. Each sponsor is responsible for securing introduction of the proposal in the 1991 Legislative Assembly.

Teachers' Fund for Retirement

Former NDCC Chapter 15-39 established the Teachers' Insurance and Retirement Fund. This fund, the rights to which were preserved by NDCC Section 15-39.1-03, provides a fixed annuity for full-time teachers whose rights vested in the fund before July 1, 1971. The plan was repealed in 1971 when the Teachers' Fund for Retirement was established with the enactment of NDCC Chapter 15-39.1. The plan is managed by the board of trustees of the Teachers' Fund for Retirement.

The Teachers' Fund for Retirement plan provides a retirement benefit of 1.275 percent of final average salary times the number of years of teaching service. The final average salary is defined as the average of the highest annual salaries for any three years of service under the fund. Full benefits are payable when the teacher has completed five years of teaching credit and is at least 65 years of age or when the teacher has a combined total of years of service credit and years of age that is equal to at least 85 if one year of that credit was completed after July 1, 1979. The plan provides for a minimum benefit for participants with at least 10 years of credited service as of June 30, 1971, of \$6 per month per year of teaching for the first 25 years of service and \$7.50 per month of teaching credit for service over 25 years.

After retirement, benefits are adjusted as deemed necessary by the Legislative Assembly. Postretirement adjustments were provided in 1983, 1985, 1987, and 1989. A reduced early retirement benefit is available after five years of service. Disabled teachers are entitled to receive a benefit equal to the greater of 20 percent of the teacher's last annual salary or a normal retirement pension computed without consideration for the disabled teacher's age.

The teacher and the teacher's employer each contribute 6.75 percent of covered salary to the plan. Employers are permitted to pay the employee's share by effecting an equal cost reduction in the gross salary of the teacher or by offsetting the contribution against future salary increases.

The latest available report of the consulting actuary was dated July 1, 1989. According to the report, on that date the fund had total assets with an actuarial value of approximately \$385.8 million and a market value of approximately \$412.6 million. Total active membership was 9,627 (3,461 men and 6,166 women). The report indicated that an employer contribution of 5.93 percent of projected fiscal 1989 compensation would be necessary to meet the normal cost and payment of unfunded liability. This results in an actuarial margin of .82 percent, the difference between the indicated required employer contribution and the expected employer contributions of 6.75 percent. Although a more recent report of the consulting actuary was not available at the time the committee considered proposals affecting the Teachers' Fund for Retirement, a representative of the fund indicated that the actuarial margin as of July 1, 1990, was 2.52 percent of compensation.

The following is a summary of proposals affecting the Teachers' Fund for Retirement over which the committee took jurisdiction and the committee's action on each proposal:

Bill No. 1.

Sponsor: Board of Trustees

Proposal: Increase benefit multiplier from 1.275 percent to 1.4 percent; postretirement benefit increase of 10 percent; benefit increase for college teachers under Chapter 15-39.2 of one-half percent for each year of service; provide an annual increase in final average salary for purposes of calculating deferred retirement benefits; revise eligibility criteria for partial service retirement; clarifica-

tion of computation of actuarial reduction applicable to early retirement. The committee amended the proposal at the request of the board to change the postretirement adjustment to the greater of a 10 percent in the currently payable annuity or a level increase based on years of services as follows: \$3 per year for retirements before 1980; \$2 per year for retirements between 1980 and 1983; and \$1 per year for retirements in 1984 through June 30, 1991, and to provide a minimum monthly benefit of \$5 and a maximum monthly benefit of \$75. Also, at the request of the board the provisions concerning computation of actuarial reductions applicable to early retirement were removed from the bill.

Actuarial Analysis: The reported annual actuarial cost of the original proposal would be approximately 2.79 percent of July 1, 1989, total covered compensation. The estimated actuarial cost of the amended proposal would be a .89 percent increase in the 4.23 percent employer cost.

Committee Report: Favorable recommendation on the proposal as amended provided the actuarial margin of the Teachers' Fund for Retirement as of July 1, 1990, is adequate to fund the proposal.

Bill No. 2.

Sponsor: Board of Trustees

Proposal: Revise definition of "salary" for purposes of calculating assessments and final average salary; incorporate benefit limitations imposed under the Internal Revenue Code; revise provision relating to an annual audit of the fund; revise available options relating to employer pickup of teacher contributions.

Actuarial Analysis: The bill has no actuarial impact on the Teachers' Fund for Retirement.

Committee Report: Favorable recommendation.

Bill No. 3.

Sponsor: Board of Trustees

Proposal: Establish a postretirement investment fund.

Actuarial Analysis: The bill would have no explicit actuarial cost impact on the Teachers' Fund for Retirement as it is designed to provide benefit enhancement from available actuarial margins resulting from investment yield experience gains.

Committee Report: Unfavorable recommendation because the board

has withdrawn its support for the proposal.

Bill No. 4. **Sponsor:** Representative Bob Martinson

Proposal: Provide a process for nominating gubernatorial appointees to the board of trustees.

Actuarial Analysis: The bill would have no actuarial cost impact on the Teachers' Fund for Retirement.

Committee Report: Favorable recommendation.

Public Employees Retirement System

The Public Employees Retirement System is governed by NDCC Chapter 54-52. The plan is supervised by the retirement board and covers most employees of the state, district health units, and the Garrison Diversion Conservancy District. Elected officials and officials first appointed before July 1, 1979, can choose to be members. Officials appointed to office after that date are required to be members. Most Supreme Court and district court judges are also members of the plan, but receive benefits different from other members. A county, city, or school district may choose to participate on completion of an employee referendum and making an agreement with the retirement board.

The plan provides for participating members other than judges to receive a retirement benefit of 1.65 percent of final average salary times the number of years of service. For judges, the normal retirement is three percent of final average salary times the first 10 years of judicial service, two percent of final average salary for the next 10 years, and one percent for service after 20 years. Under Section 54-52-17(2), final average salary is defined as the average of the highest salary received by the member for any 36 months employed during the last 10 years of employment. An employee is vested after five years of service. The normal retirement benefit is payable at age 65 or when the member has a combined total of years of service credit and years of age equal to 90. A reduced early retirement benefit is payable for vested employees who have reached age 55. Disability retirement benefits are payable to members who become permanently and totally disabled after completing at least 180 days of eligible employment and who are entitled to a Social Security disability award. Disability benefits are calculated at 70 percent of the member's final average salary, reduced by any primary benefits received under the federal Social Security Act and by any workers compensation benefits paid. The minimum monthly disability retirement benefit is \$100.

The employer contributes 4.12 percent of covered salary to the plan and the employee contributes four percent. The 1989 Legislative Assembly enacted Senate Bill No. 2068, which established a retiree health benefits fund account with the Bank of North Dakota for the purpose of prefunding hospital benefits coverage and medical benefits coverage under the uniform group insurance program for retired members of the Public Employees Retirement System and the Highway Patrolmen's Retirement

System receiving retirement benefits or surviving spouses of those retired members who were eligible to receive, or were receiving, retirement benefits, reduced the employer contribution under both the Public Employees Retirement System and the Highway Patrolmen's Retirement System from 5.12 percent to 4.12 percent or one percent of the monthly salaries or wages of participating members, including participating Supreme Court and district court judges, and redirected those moneys to the retiree health benefits fund by requiring the state and other participating employers to contribute one percent of monthly salaries and wages to the health benefits fund. For many employees, no deduction is made from pay for the employee's share. This is the result of 1983 legislation that provided for a phased-in "pickup" of the employee contribution in lieu of a salary increase at that time.

The latest available report of the consulting actuary is dated July 1, 1989. According to the report, on that date the Public Employees Retirement System had net assets with a cost value of approximately \$309.7 million, with a market value of approximately \$347.5 million, excluding assets of the Highway Patrolmen's Retirement System but including assets of approximately \$3 million at cost value on behalf of judges. Total active membership was 14,081 (5,971 men other than judges, 8,082 women other than judges, and 28 judges). Although a more recent report of the consulting actuary was not available at the time the committee considered proposals affecting the Public Employees Retirement System, a representative of the system presented a preliminary actuarial valuation report indicating an employer contribution of 3.73 percent of compensation would be necessary to meet the normal cost and cost of amortizing "unfunded" liability associated with non-judge members. This results in a preliminary actuarial margin of .39 percent of total covered compensation, the difference between the indicated required employer contribution and the statutory 4.12 percent.

The following is a summary of the proposals affecting the Public Employees Retirement System over which the committee took jurisdiction and the committee's action on each proposal:

Bill No. 5. **Sponsor:** Retirement Board

Proposal: Revise the nature of contributions required of temporary employees participating in the plan and provide a 180-day election period; continue authorization for purchase of additional credit until December 31, 1991; grant credit for military service; recognize as correct the plan's employment records as of July 1, 1991; incorporate benefit limitations imposed under the Internal Revenue Code; authorize the retirement board to modify plan provisions that do not comply with federal law. The committee amended this proposal at the request of the retirement board to allow temporary employees to withdraw contributions made to the retiree health benefits

fund because the one percent retiree health benefit fund contribution is paid by the temporary employee and generally such contributions are refundable to employees who terminate employment and who do not take retirement or health benefits.

Actuarial Analysis: Specific data with regard to participants with military service except for those who have actually purchased such service is not available. As a result no formal actuarial cost impact can be ascertained. Notwithstanding this, the estimated actuarial cost impact probably will not exceed .5 percent of covered compensation as of July 1, 1989. The other provisions of the bill would have no actuarial cost impact.

Committee Report: Favorable recommendation on the proposal as amended. The liability to the Public Employees Retirement System fund should be treated as an accrued liability of the fund because of the unavailability of data concerning participants with military service.

Bill No. 6.

Sponsor: Retirement Board

Proposal: Increase benefit multipliers applicable to supreme and district court judges; temporarily reduce the employer contribution for supreme and district court judges under the Public Employees Retirement System plan and increase the employer contribution under the Public Employees Retirement System retiree health benefits program to include judges retired under Chapter 27-17 in the Public Employees Retirement System retiree health benefits program; provide automatic refund for certain employees who terminate employment.

Actuarial Analysis: The annual actuarial cost of the increase in the benefit multiplier is approximately \$58,349 or 3.7 percent of July 1, 1989, total covered compensation. The remaining features of the bill have no additional actuarial impact. The increase in cost would result in a total employer contribution requirement of 12.88 percent of covered compensation. If the employer contribution is decreased to 12.52 percent, a funding deficit of .36 percent will result as of the July 1, 1989, actuarial valuation.

Committee Report: Favorable recommendation because the proposal provides a benefit enhancement at a reasonable cost.

Bill No. 7.

Sponsor: Representative Bob Martinson

Proposal: Provide a Rule of 88 for purposes of determining normal retirement date; increase benefit multiplier from 1.65 to 1.8 percent; and provide credit for certain military service. The committee amended this proposal at the request of Representative Martinson to delete the credit for certain military service and to provide an effective date of January 1, 1992, provided the margin of the Public Employees Retirement System nonjudge's fund covers the actuarial impact of this proposal. If the margin of the Public Employees Retirement System nonjudge's fund does not cover the actuarial impact of the proposal on January 1, 1992, the bill does not become effective.

Actuarial Analysis: The reported annual actuarial cost impact of adopting a Rule of 88 for normal retirement eligibility would be approximately \$244,430 or .10 percent of July 1, 1989, total covered compensation. The reported annual actuarial cost impact of increasing the benefit multipliers would be approximately \$3,226,500 or 1.32 percent of July 1, 1989, total covered compensation.

Committee Report: Favorable recommendation as amended.

Bill No. 8.

Sponsor: Representative Bob Martinson

Proposal: Provide an early retirement incentive program.

Actuarial Analysis: The reported annual actuarial cost impact would be approximately \$171,000 or .07 percent of July 1, 1989, total covered compensation.

Committee Report: Unfavorable recommendation because Representative Martinson has withdrawn his support for the proposal.

Bill No. 9.

Sponsor: Senator Joseph A. Satrom

Proposal: Establish a separate level of retirement benefits for law enforcement officers participating in the Public Employees Retirement System.

Actuarial Analysis: The reported annual actuarial cost impact would be approximately .20 percent of July 1, 1989, total covered compensation if contributions were made by employers or approximately 1.10 percent of law enforcement of-

ficer covered compensation if contributions were made by employees.

Committee Report: Unfavorable recommendation because of the unavailability of current actuarial information.

Bill No. 16. **Sponsor:** Representative Charles F. Mertens

Proposal: Postretirement benefit increase for individuals who retired prior to July 1, 1985, and qualified under the Rule of 90; prospective effect.

Actuarial Analysis: The reported annual actuarial cost impact would be approximately \$49,000 or .02 percent of July 1, 1989, total covered compensation.

Committee Report: Unfavorable recommendation because retroactive increases may be viewed as inequitable by those retirees who chose to defer retirement in order to take advantage of anticipated changes such as the Rule of 90.

Bill No. 17. **Sponsor:** Retirement Board

Proposal: Rule of 85 for determining normal retirement benefits; increase benefit multiplier from 1.65 percent to 1.80 percent; revise disability retirement benefits and eligibility requirements. The committee amended the proposal at the request of the board to eliminate the Rule of 85 and to increase the benefit multiplier from 1.65 percent to 1.69 percent as opposed to 1.80 percent.

Actuarial Analysis: Representatives of the retirement board estimated the annual actuarial cost impact would be approximately .35 percent of July 1, 1990, total covered compensation.

Committee Report: Favorable recommendation because the proposal provides a benefit enhancement at a reasonable cost.

The following summary is of a proposal affecting the Public Employees Retirement System which would have a minimal or no actuarial cost impact:

Bill No. 13. **Sponsor:** Retirement Board

Proposal: Prohibit unfair health care provider insurance practices.

Committee Report: Favorable recommendation.

Other Retirement Plans

The committee considered several proposals dealing with changes to other retirement plans, including the Highway Patrolmen's Retirement System, the Old-Age and Survivor Insurance System, and Alter-

nate Firefighters Relief Association Plan. The committee considered the following proposals:

1. Highway Patrolmen's Retirement System.

Bill No. 10. **Sponsor:** Retirement Board

Proposal: Provide a Rule of 80 for purposes of determining normal retirement date; revise calculation of final average salary; increase benefit multiplier from 2.75 percent to 2.9 percent of final average salary for the first 25 years of service; provide postretirement increase in benefit multiplier from 2.75 percent to 2.9 percent of final average salary; provide an annual increase in final average salary for purposes of calculating deferred vested retirement benefits; incorporate benefit limitations imposed under the Internal Revenue Code; authorize the board to modify plan provisions that do not comply with federal law. The committee amended this proposal at the request of the board to retain the calculation of final average salary as determined under present law and to provide a postretirement increase in the benefit multiplier from 2.75 percent to 2.83 percent as opposed to 2.9 percent of final average salary.

Actuarial Analysis: The reported actuarial cost impact of adopting a Rule of 80 for normal retirement would be approximately \$32,800 or 1.10 percent of July 1, 1989, total covered compensation. The reported actuarial cost impact of indexing final average salary for deferred vested members would be approximately \$14,909 or .50 percent of July 1, 1989, total covered compensation. The reported annual actuarial cost impact of the proposal would be approximately \$89,000 or 3.60 percent of July 1, 1989, total covered compensation. Representatives of the retirement board estimated the annual actuarial cost impact of the proposal, as amended, would be approximately 2.72 percent of July 1, 1990, total covered compensation.

Committee Report: Favorable recommendation as amended because the proposal provides a reasonable benefit enhancement in light of the available margin.

2. Old-Age and Survivor Insurance System

Bill No. 11. **Sponsor:** Job Service North Dakota

Proposal: Increases Old-Age and Survivor Insurance System benefits by \$20 per month for fiscal year 1991 and by an additional \$20 for fiscal year 1992.

Cost Analysis: Job Service North Dakota indicated that the proposal would increase benefit payments by \$24,180 during the biennium beginning July 1, 1991, and ending June 30, 1993.

Committee Report: Favorable recommendation.

3. Alternate Firefighters' Relief Association Plan
Bill No. 12. **Sponsor:** Senator Joseph A. Satrom

Proposal: Revise definition of "firefighter" and membership application procedure; authorize a fee to be paid to an association president and secretary-treasurer; eliminate the association general fund and authorize various expenditures from the association state fund; provide for a definition of "child" for purposes of determining pension beneficiaries.

Actuarial Impact: The proposal does not affect the Public Employees Retirement System.

Committee Report: Favorable recommendation.

Other Employee Benefit Bills

The following proposals submitted to the committee relate to other employee benefits and do not affect a Public Employees Retirement System program. The committee decided to waive jurisdiction over the following proposals:

Bill No. 14. **Sponsor:** Retirement Board

Proposal: Provide a continuing appropriation relating to the administration of the pretax benefits program and provide for confidentiality of program records.

Bill No. 15. **Sponsor:** Retirement Board

Proposal: Authorize the retirement board to limit the number of providers of investment plans under the deferred compensation program and impose an annual fee on providers to defray certain expenses of administering the program.

Bill No. 18. **Sponsor:** Retirement Board

Proposal: Impose additional requirements on political subdivisions participating in the uniform group insurance program.

CONSOLIDATION OF ORGANIZATIONAL AND INVESTMENT FUNCTIONS OF THE PUBLIC EMPLOYEES RETIREMENT SYSTEM, THE TEACHERS' FUND FOR RETIREMENT, AND THE STATE INVESTMENT BOARD STUDY

Senate Bill No. 2030, enacted by the 1989 Legislative Assembly, required the Legislative Council to direct the Committee on Public Employees Retirement Programs to study the feasibility and

desirability of various options relating to the consolidation of various organizational and investment functions of the Public Employees Retirement System, the Teachers' Fund for Retirement, and the State Investment Board. Generally, Senate Bill No. 2030 established the North Dakota State Retirement and Investment Office to coordinate the activities of the State Investment Board and Teachers' Fund for Retirement and transferred the responsibility for investment of moneys of Public Employees Retirement System from funding agents under contract with the Public Employees Retirement System to the State Investment Board. The bill is effective through June 30, 1991.

Background

The idea of consolidating functions of the various retirement programs in the state is not new. For example, the 1985 Legislative Assembly passed a concurrent resolution directing the Legislative Council to study the consolidation of various public employees retirement funds in the state for the purpose of providing more effective management and investment of public employees retirement funds. That study resolution was prioritized by the Legislative Council; however, the study was not pursued at that time. A 1969-70 interim committee of the Legislative Council studied the feasibility of a merger of the state employees' retirement fund, teachers' insurance and retirement fund, and Highway Patrolmen's retirement fund. Although the committee concluded that such a merger would not be "practical," an actuarial consultant to the committee recommended that the investment portfolios, administration, and recordkeeping functions of the three retirement funds be placed under one management.

Statutory Provisions in Existence Prior to the Effective Date of 1989 Senate Bill No. 2030

Public Employees Retirement System

The Public Employees Retirement System is governed by NDCC Chapter 54-52. The plan is supervised by the PERS Board, covers most employees of the state, district health units, and the Garrison Diversion Conservancy District. Elected officials and officials first appointed before July 1, 1979, can choose to be members. Officials appointed to office after that date are required to be members. Most supreme and district court judges are also members of the plan, but receive benefits different from other members. A county, city, or school district may choose to participate on completion of an employee referendum and making an agreement with the PERS Board.

The Public Employees Retirement System is governed by a state agency known as the retirement board. Senate Bill No. 2461, enacted by the 1989 Legislative Assembly, amended NDCC Section 54-52-03 to provide for a board consisting of seven, rather than five, voting members, including a chairman appointed by the Governor, a member appointed by the Attorney General from the Attorney General's legal staff, State Health Officer, three members elected by and from among the active participating

members, and a member elected by and from among persons receiving or eligible to receive PERS retirement benefits. The board is granted the powers and privileges of a corporation and is required to appoint an executive director and authorize the employment of whatever staff it deems necessary for the sound and economical administration of the system. The board is required to arrange for actuarial and medical advisors for the system and to select funding agents and establish an investment contract for the purpose of holding and investing moneys for the system. In addition to its duties associated with the retirement system, the board administers the uniform group insurance program and the deferred compensation plan for public employees.

Teachers' Fund for Retirement

Former NDCC Chapter 15-39 established the teachers' insurance and retirement fund. This fund, the rights to which were preserved by NDCC Section 15-39.1-03, provides a fixed annuity for full-time teachers whose rights vested in the fund before July 1, 1971. The plan was repealed in 1971 when the Teachers' Fund for Retirement was established with the enactment of NDCC Chapter 15-39.1. The plan is managed by the board of trustees of the Teachers' Fund for Retirement.

House Bill No. 1371, enacted by the 1989 Legislative Assembly, amended NDCC Section 15-39.1-05, effective July 31, 1989, to provide that the Teachers' Fund for Retirement Board consists of the State Treasurer, Superintendent of Public Instruction, and three persons appointed by the Governor, one of whom must be a full-time school administrator, one of whom must be actively employed as a full-time classroom teacher or school counselor, and one of whom must be a retired member of the fund. Section 15-39.1-06 allows the Teachers' Fund for Retirement Board to employ an administrator and deputy administrator. The investment of the fund is under the supervision of the State Investment Board.

State Investment Board

The State Investment Board was established by the 1963 Legislative Assembly, following a Legislative Council study of the investment of state funds. The State Investment Board consists of the Governor, State Treasurer, Commissioner of University and School Lands, the director of the Workers Compensation Bureau, Commissioner of Insurance, the executive secretary of the Teachers' Fund for Retirement, and three members who are experienced in, and have considerable knowledge of, the field of investments. The board is charged with the investment of the following funds, as enumerated in NDCC Section 21-10-06:

1. State bonding fund.
2. Teachers' Fund for Retirement.
3. State fire and tornado fund.
4. Workers' compensation fund.
5. Veterans' Home improvement fund.
6. National Guard training area and facility development trust fund.
7. National Guard tuition trust fund.

The board is required to approve general types of securities transactions on behalf of the enumerated funds and representatives of those funds may make recommendations to the board in regard to investments. The board is authorized to appoint an investment director and advisory service and other needed personnel. The investment director is authorized to make investments of funds under the management of the board and is required to formulate and recommend investment regulations to the board concerning the nature of investments and limitations upon methods for investment which should govern the investments of funds. The State Investment Board is required to apply the prudent investor rule in investing for funds under its supervision.

Senate Bill No. 2030

The 1987-88 Committee on Public Employees Retirement Programs heard testimony from representatives of the Office of Management and Budget indicating that the retirement system goals and investment objectives of the Public Employees Retirement System and the Teachers' Fund for Retirement are similar in many respects and that possible administrative efficiencies and cost savings might be realized through the consolidation of various organizational and investment functions of the Public Employees Retirement System, Teachers' Fund for Retirement, and State Investment Board. In recognition that a consolidation decision of this nature should be made by the Legislative Assembly in close consultation with the affected boards, the committee recommended 1989 House Concurrent Resolution No. 3006 to direct the Legislative Council to study the feasibility and desirability of various options relating to the consolidation of various organizational and investment functions of the Public Employees Retirement System, Teachers' Fund for Retirement, and State Investment Board. That study resolution was passed by the Legislative Assembly but not prioritized by the Legislative Council in light of an identical study mandated by Senate Bill No. 2030.

As introduced at the request of the Office of Management and Budget, Senate Bill No. 2030 would have created a State Retirement and Investment Office to coordinate the activities of the State Investment Board, Public Employees Retirement System, and Teachers' Fund for Retirement. The office would have been governed by an administrative board consisting of five members from the Teachers' Fund for Retirement Board, five members from the Public Employees Retirement System Board, including all of the elected board members, the Governor or the Lieutenant Governor if so designated by the Governor, the Commissioner of University and School Lands, the director of the Workers Compensation Bureau, and the Commissioner of Insurance. Each board would have maintained its separate legal identity and authority under the bill as introduced; however, the administrative board would have been empowered to "do all things necessary to coordinate the activities of the State Investment Board, Teachers' Fund for Retirement, and Public Employees Retirement System to achieve cost savings and promote efficiency." The bill as introduced would also have restructured the State Invest-

ment Board to include three members of the Teachers' Fund for Retirement Board and three elected members of the Public Employees Retirement System Board. The present requirement that three members of the State Investment Board be experienced in and have considerable knowledge of the field of investments would have been eliminated in favor of authorizing the State Investment Board to establish an advisory council comprised of individuals experienced and knowledgeable in the field of investments.

Under the bill as introduced, the Public Employees Retirement System fund would have been included as a fund under the management of the State Investment Board. The bill provided that the board could commingle the moneys of the individual funds for investment purposes when deemed advantageous and could provide investment services to any other agency, institution, or political subdivision of the state. The bill required that the State Investment Board invest the funds belonging to the Teachers' Fund for Retirement and Public Employees Retirement System in accordance with those funds' investment goals and objectives and required the board to develop an asset allocation plan for each fund in accordance with the investment goals and objectives of each respective fund, subject to the approval of the governing body of each fund.

The bill as introduced would also have deleted references in NDCC Chapter 54-52 requiring the Public Employees Retirement System Board to appoint an executive director and authorizing the board to create whatever staff it deems necessary for the administration of the Public Employees Retirement System.

Senate Bill No. 2030 as introduced encountered opposition in the Senate standing Committee on State and Federal Government from some members of the Public Employees Retirement System Board, North Dakota Public Employees Association, the Association of Former Public Employees, and Association of Federal, State, County, and Municipal Employees. A compromise was reached in the form of substantial amendments to Senate Bill No. 2030 which were adopted in the Senate, and the bill was ultimately passed by both the Senate and the House of Representatives. A proposed amendment to the bill considered late in the session by the House standing Committee on State and Federal Government would have replaced the State Investment Board with a State Investment Office governed by a board chaired by the Lieutenant Governor and consisting of four members with expertise and experience in the field of investments. The office would have managed the Public Employees Retirement System fund and funds previously managed by the State Investment Board, including the Teachers' Fund for Retirement, and would otherwise have been granted the powers and duties of the State Investment Board. Those opposing the proposed amendments cited the lack of direct involvement of the governing bodies of the retirement funds and the late date during the session as reasons for opposing the amendments.

Senate Bill No. 2030 as passed by the Legislative Assembly establishes the North Dakota State Retirement and Investment Office; however, the scope of

the office is to coordinate only the activities of the State Investment Board and the Teachers' Fund for Retirement, and not the Public Employees Retirement System. However, the bill does transfer responsibility for investment of moneys of the Public Employees Retirement System from funding agents under contract with the Public Employees Retirement System to the State Investment Board. The administrative board created to oversee and operate the State Retirement and Investment Office consists of the Governor or a designee of the Governor, State Treasurer, and the president of the Teachers' Fund for Retirement Board. The bill also created a special fund for the purpose of defraying administrative expenses of the office, which is funded through payments from the funds, such as the Public Employees Retirement System and the Teachers' Fund for Retirement, under the management of the State Investment Board. Senate Bill No. 2025 appropriated \$1,978,681 from this special fund to the State Retirement and Investment Office for the 1989-91 biennium. The bill restructured the membership of the State Investment Board by replacing the executive secretary of the Teachers' Fund for Retirement with three members of the Teachers' Fund for Retirement Board or the board's designees and replaced the three members of the State Investment Board who are members based on their experience and knowledge of the field of investments with three elected members of the Public Employees Retirement System Board. However, the State Investment Board is authorized to establish an advisory council comprised of individuals who are experienced and knowledgeable in the field of investments and to determine the responsibilities of that council. The bill removed the authority of the State Investment Board to appoint an investment director or advisory service.

With respect to investment functions, Senate Bill No. 2030 placed the Public Employees Retirement System fund under the management of the State Investment Board, as well as the Teachers' Fund for Retirement fund as presently provided by law, and requires the State Investment Board to develop an asset allocation plan for each fund in accordance with the investment goals and objectives of each fund, subject to the approval of the governing body of each fund. The bill requires that the retirement funds belonging to the Teachers' Fund for Retirement and the Public Employees Retirement System be invested exclusively for the benefit of their members and in accordance with the respective funds' investment goals and objectives. The bill allows the board to commingle the moneys of the individual funds for investment purposes when it is deemed advantageous and authorizes the State Investment Board to provide investment services to other agencies, institutions, or political subdivisions of the state subject to agreement with the Industrial Commission. The State Investment Board is authorized to charge a fee for providing any of these additional investment services. The bill also removes references to and the authority of the Public Employees Retirement System Board to select funding agents for purposes of investing moneys of the Public Employees Retirement System fund and amends NDCC Chapter 54-52 to specify that the investment of the Public

Employees Retirement System fund is under the supervision of the State Investment Board and that such moneys are required to be placed for investment only with a firm whose endeavor is money management and only after a trust agreement or contract has been executed.

Potential for Efficiencies in Combining Administrative and Investment Functions of the Public Employees Retirement System, the Teachers' Fund for Retirement, and the State Investment Board

The Office of Management and Budget prepared a report entitled "Report on the Administrative Consolidation of the Teachers' Fund for Retirement, Public Employees Retirement System, and State Investment Board into the State Retirement and Investment Office," dated December 1988, which examines the potential for combining the administrative and investment functions of the Public Employees Retirement System, the Teachers' Fund for Retirement, and the State Investment Board. The report concludes based on a proposed restructuring of the agencies that:

1. The three agencies share similar goals and objectives.
2. The three agencies have similar investment objectives and utilize modern portfolio management techniques.
3. Consolidation of the administrative functions of the three agencies would reduce the need for additional staff while putting into place an organization that responds to all the requested needs plus some future needs (the proposed structure incorporates internal audit functions and planning functions).
4. A larger investment pool will reduce the cost of investing funds.
5. Consolidation of the administrative and investment functions could be accomplished without altering the Teachers' Fund for Retirement and the Public Employees Retirement System boards. Each of the boards would retain its authority for designing and managing its respective benefits plan.
6. Each retirement fund would maintain its individual autonomy.
7. Total organizational and investment savings would be \$560,252 a year. If these funds were retained in their respective funds and achieved a rate of return consistent with their objective, an additional \$57,929,722 would be in the funds at the end of 30 years.

Other States' Consolidation Activity and Investment Provisions

South Dakota

South Dakota provides an appropriate example of states that have engaged in consolidation activity with respect to state retirement programs. In 1974 South Dakota consolidated its eight state-administered systems and six municipal programs. The consolidation merged the Supreme and Circuit Court Judicial Retirement System, District County Court and Municipal Court Judges Retirement Program,

South Dakota Teachers Retirement System, South Dakota Municipal Retirement System, South Dakota Law Enforcement Retirement System, and South Dakota Public Employees Retirement System into a consolidated system known as the South Dakota Retirement System. Each system granted different benefits, required different levels of contributions by the employer and employee, had unique membership eligibility requirements, and mandated various funding and investment policies. Because the average benefits for retired public employees under the systems was a maximum of \$80 per month in 1974 with average benefits substantially less, one of the major objectives of the consolidation was improvement of retirement benefits. A consolidated system was enacted which is administered by a 16-person board of trustees composed of members and several appointed state officials.

The South Dakota consolidated system has two classes of members— Class A for general employees and teachers and Class B for law enforcement officers and judges. All previous state systems were merged into the new plan and local systems were given the option of joining, but no new local plans can be established. Benefits and contribution rates differ slightly between the classes, but both have the same disability and death benefits, vesting rights, and postretirement increases. All benefits are integrated with Social Security and an actuarial evaluation is made biennially. A "one-time" appropriation of \$10.5 million (provided over three years) was necessary to fund benefit improvements and to bring all systems to the same funding level. The board of trustees is authorized to appoint an administrator for the system. The state's investment office known as the State Investment Council is responsible for investing the assets of the retirement system and is authorized to pool the retirement funds for investment purposes. The State Investment Council consists of seven voting members, five of whom are appointed by the executive board of the state's Legislative Research Council, State Treasurer, and a representative of the board of trustees of the South Dakota Retirement System.

Montana

The Montana Public Employees Retirement Board administers seven of the state's eight public retirement systems. The second largest state system, the Teachers Retirement System, has a separate board. Systems administered by the Public Employees Retirement Board include the Public Employees Retirement System, Highway Patrol Retirement, Sheriffs Retirement, Game Wardens Retirement, Police Retirement, Volunteer Firefighters Retirement, and Firefighters Unified Retirement plans. The Montana Public Employees Retirement Board consists of six members appointed by the Governor, including three public employees who are active members of a public retirement system, a retired public employee, and two members at large. The Teachers Retirement Board consists of six members appointed by the Governor, including the Superintendent of Public Instruction, two persons from the teaching profession who are members of the Teachers Retirement System, two persons appointed as repre-

sentatives of the public, and one member who is a retired teacher and a member of the retirement system at the time of retirement.

All state investments in Montana, including pension funds, are controlled by the Montana Board of Investments. The Board of Investments is composed of nine members appointed by the Governor, including one member from the Public Employees Retirement Board, one member from the Teachers Retirement Board, and seven members "who will provide a balance of professional expertise and public interest and accountability and who are informed and experienced in the subject of investments and who are representative of the financial community, small business, agriculture, and labor." The Board of Investments is authorized to employ an investment officer, an assistant investment officer, and an executive director who have general responsibility for the selection and oversight of the board's staff and for direct investment and economic development activities.

Minnesota

Minnesota is similar to Montana in that the various existing public retirement plans or funds are invested by a state board. Minnesota requires each executive director administering a retirement fund or plan, from time to time, to certify to the State Board for Investment those portions of the assets of the retirement fund or plan which in the judgment of that director are not required for immediate use. The board invests those funds pursuant to a statutory list of authorized investments.

The Minnesota State Board of Investment is created specifically under the Minnesota Constitution for the purpose of administering and directing the investment of all state funds and pension funds. Pursuant to the Minnesota Constitution, the state board consists of the Governor, State Auditor, State Treasurer, Secretary of State, and Attorney General. The state board selects an executive director to administer and invest the money available for investment. Minnesota has also created an Investment Advisory Council consisting of 17 members, including 10 members appointed by the state board who are experienced in general investment matters, and the Commissioner of Finance, the executive director of the Minnesota State Retirement System, the executive director of the Public Employees Retirement Association, the executive director of the Teachers Retirement Association, a retiree receiving benefits under the state's postretirement investment fund, and two public employees who are active members of funds whose assets are invested by the state board. The advisory council advises the state board and the director on general policy matters relating to investments and on methods to improve the rate of return on invested money while ensuring adequate security. The state has established the "Minnesota Combined Investment Funds" for the purpose of providing investment vehicles for assets of the participating funds, which is managed by the state board. The public retirement plans and funds participating in the Minnesota combined investment funds include the State Employees Retirement Fund, Correctional Employees Retirement Plan, State Patrol Retirement

Fund, Public Employees Retirement Fund, Public Employees Police and Fire Fund, Teachers Retirement Fund, and the Judges Retirement Fund.

Testimony and Committee Considerations

The committee received information from representatives of the State Retirement and Investment Office and the Public Employees Retirement System throughout the interim concerning the progress made with respect to the implementation of 1989 Senate Bill No. 2030. Representatives of the State Retirement and Investment Office reported that through June 30, 1990, the creation of the Retirement and Investment Office had resulted in administrative savings of \$182,399 and investment savings of \$158,928 for a total of \$341,327 of savings from the 1989-91 budget request. However, the commingling of moneys, which results in savings, was not complete at the end of the fiscal year ending June 30, 1990. Representatives of the Retirement and Investment Office reported that two of the commingled accounts have been in effect the entire year while most accounts have been commingled for only six months. At the close of the fiscal year ended June 30, 1990, all of the active fixed income accounts had been commingled. Other accounts include real estate, international fixed income, indexed equity, and one new equity account. Representatives of the Retirement and Investment Office reported that increased savings are expected as the equity accounts are commingled during the next fiscal year.

The committee studied a proposal to remove the sunset provision placed on 1989 Senate Bill No. 2030, which established the North Dakota Retirement and Investment Office and consolidated the investment functions of the Public Employees Retirement System and the State Investment Board. Under the proposal the Retirement and Investment Board established under Senate Bill No. 2030 would be eliminated and its administrative responsibilities transferred to the State Investment Board. Members of the State Investment Board, except elected and appointed officials, would be compensated for meetings attended in the amount as provided in NDCC Section 54-35-10 for members of the Legislative Council and its committees as well as mileage and travel expenses as provided in Sections 54-06-09 and 44-08-04. Statutory language concerning the adoption of investment goals and objectives as well as asset allocation policies that represents a "partnership" in the investment process between the State Investment Board and the administrators of the various funds under its supervision is included in the proposal. Finally, representatives of the Retirement and Investment Office advocated that the proposal include a continuing appropriation for administrative costs associated with the provision of investment services to state agencies, institutions, and political subdivisions not listed in NDCC Section 21-10-06.

The committee also studied a proposal to direct the Legislative Council to study the feasibility and desirability of consolidating the Retirement and Investment Office, Public Employees Retirement System, and Teachers' Fund for Retirement. The proposal recognized that the merger of the investment functions of the Retirement and Investment

Office, Public Employees Retirement System, and Teachers' Fund for Retirement has been successful and resulted in cost savings and that the consolidation of areas such as accounting, computerization, benefits counseling, and management staffing has the potential to result in significant further cost savings.

Recommendations

The committee recommends Senate Bill No. 2078 to make the establishment of the North Dakota State Retirement and Investment Office permanent by repealing the sunset provisions placed on 1989 Senate Bill No. 2030 and to make the repeal retroactive to June 29, 1991. The bill eliminates the Retirement and Investment Office Board and transfers the administrative responsibilities of that board to the State Investment Board. The bill provides that members of the State Investment Board, except elected and appointed officials, are entitled to receive the same compensation per day as provided in Section 54-35-10 for members of the Legislative Council and necessary mileage and travel expenses as provided in Sections 44-08-04 and 54-06-09 for attending meetings with the State Investment Board. Concerning the investment goals and objectives and asset allocation plans of the State Investment Board and the governing bodies of the funds managed by the State Investment Board, the bill establishes that the policies on investment goals and objectives and asset allocation for each fund must be approved by the governing body of that fund and the State Investment Board by January 1 of each year to be effective. If policies are not approved, the previous policies on investment goals and objectives and asset allocation remain effective. The bill provides that the governing body of each fund must use the staff and consultants of the Retirement and Investment Office in developing those policies.

The committee recommends Senate Concurrent Resolution No. 4005 to direct the Legislative Council to study the feasibility and desirability of consolidating the Retirement and Investment Office, Public Employees Retirement System, and Teachers' Fund for Retirement.

HEALTH INSURANCE COVERAGE FOR RETIRED PUBLIC EMPLOYEES STUDY

Background

Senate Concurrent Resolution No. 4006 directed a study of issues and the feasibility of various options relating to the provision of adequate and affordable health insurance coverage for retired members of the Teachers' Fund for Retirement and the judges' retirement program, and for other retired state employees and officials not participating in the Public Employees Retirement System or the Highway Patrolmen's Retirement System.

Senate Concurrent Resolution No. 4006 was recommended by the 1987-88 Retirement Committee as a result of that committee's consideration of the issue of providing adequate and affordable health insurance coverage for retired public employees. The 1987-88 interim Retirement Committee recommended 1989 Senate Bill No. 2068, which established a retiree health benefits fund for the purpose of

prefunding hospital and medical benefits coverage under the uniform group insurance program for retired members of the Public Employees Retirement System and the Highway Patrolmen's Retirement System or surviving spouses of those retired members. The final report of the 1987-88 Retirement Committee indicates that the committee was concerned that the recommended bill did not also provide a mechanism for providing adequate and affordable health insurance coverage for retired members of Teachers' Fund for Retirement, and judges and state employees who are not participating members of the Public Employees Retirement System or the Highway Patrolmen's Retirement System. Thus, the study resolution was designed to direct a further study of the retiree health insurance issue with respect to those public employees not eligible to participate in the prefunding of health insurance coverage under the provisions of 1989 Senate Bill No. 2068.

Retiree Health Benefits for Public Employees

1. Retiree Health Benefits Generally

Medical care protection for the retired population continues to be a major concern at both the national and state levels as medical costs continue to escalate and access to medical care becomes prohibitive for the poor and elderly. To obtain needed medical care, the poor rely on Medicaid, the federally supported health care program for the poor which is administered by the states. The elderly, those aged 65 and over, rely on the Medicare program, the federally administered health care program for the elderly. Recently, several factors have focused attention on retiree health benefits—the rapid escalation in medical care costs; the growth and the size of the retired population, both in absolute numbers and in relation to the working population; the increase in life expectancies; the shifting of costs to employer-sponsored health benefits plans; and the financial condition of Medicare. Employer-sponsored postretirement medical plans have become the principal source of protection for retirees under age 65 and, beyond Medicare (which requires substantial cost sharing), the most important source of medical care protection for retirees age 65 or over.

However, as indicated in a publication of the Montana Legislative Council concerning a study of retiree health insurance in that state [Report of the Select Committee on Health Insurance for Retired Public Employees to the Montana Legislature, Montana Legislature (December 1986)], employers are becoming more aware of the mounting liabilities associated with postretirement health care benefits. This is particularly true in the private sector in which corporations often provide retiree health benefits at no expense to the retirees. In most cases, these corporations fund postretirement health benefits on a pay-as-you-go basis rather than prefunding them over the working lifetime of their employees. The report cites estimates that the average costs for retiree health coverage under corporate plans range from \$2,000 to \$5,000 a year for each retiree under age 65 and from \$600 to \$1,500 for those aged 65 and over. It notes that some experts estimate that for the country's 500 largest industrial companies, the liability for health

care benefits is approximately \$2 trillion, while these companies' total assets amount to only \$1.3 trillion. The Montana report states:

Public employers who finance all or most of their postretirement health care programs are not immune to the growing unfunded liabilities that now plague the private sector. These programs, if not adequately funded, could undermine the fiscal stability of state and local governments and become a factor in establishing credit ratings.

Even among those public employers who contribute nothing toward their retirees' health insurance premiums, concern is growing over the impact of retiree participation in active employees' group plans. Retirees, as group members, pay the same premium as active employees; however, because older persons require medical care more frequently and for longer time periods, the premium paid by retirees is often insufficient to cover their actual expenses. Hence, the health plan's younger active employees, with a more favorable experience rating, end up subsidizing the retiree population.

2. PERS Health Benefits Plan

Health insurance benefits are offered to public employees under the provisions of a uniform group insurance program originally enacted in 1971 and codified as NDCC Chapter 54-52.1. The statutory purpose of the uniform group insurance program is to promote the economy and efficiency of employment in state service, reduce personnel turnover, and offer an incentive to high grade men and women to enter and remain in the service of state employment. The program provides hospital and medical benefits coverage and life insurance benefits coverage to eligible employees, which include permanent state employees and employees of various political subdivisions of the state. Prior to July 1, 1989, boards of county commissioners and the governing bodies of cities and school districts that were already participating in the Public Employees Retirement System pension plan could extend the benefits of the uniform group insurance program to their permanent employees. That statutory provision, NDCC Section 54-52.1-03.1, was amended by the 1989 Legislative Assembly through the enactment of Senate Bill No. 2148 to remove the requirement that the county, city, or school district participate in the Public Employees Retirement System pension plan as a condition of eligibility for participation under the uniform group insurance program. Under the statute, the boards of county commissioners or governing bodies of participating cities or school districts are authorized to determine the amount of their monthly contribution towards the total monthly premium amount required of each employee. North Dakota Century Code Section 54-52.1-06 requires that the state and other participating employers, such as counties, cities, and school districts, make monthly contributions to the Public Employees Retirement System Board from funds appropriated for payroll and salary in an amount equal to the full single rate monthly premium for each eligible

employee enrolled in the uniform group insurance program, and the full rate monthly premium under the alternate family contract for hospital and medical benefits coverage for spouses and dependent children of eligible employees.

Health insurance costs of retired public employees participating in the Public Employees Retirement System health benefits plan have increased significantly in recent years. North Dakota Century Code Section 54-52.1-03 generally allows a retired eligible employee receiving a retirement allowance or that retiree's surviving spouse to continue as a member of the Public Employees Retirement System health benefits plan; however, prior to the passage of Senate Bill No. 2068, no contribution toward the cost of benefits coverage could be made by the state or other participating employer. Those retired public employees not eligible to participate in the prefunding of health insurance coverage under Senate Bill No. 2068 are required to pay the full amount of premiums in effect for the coverage directly to the Public Employees Retirement System Board. The board has recently implemented substantial increases in retiree premium rates, which have generally been made to minimize the subsidization of retired participants in the Public Employees Retirement System health benefits plan by the active participants. Current monthly rates for non-Medicare eligible retirees are \$126.23 under the single plan and \$360.07 under the alternate family plan. Current monthly rates for retirees eligible for Medicare are as follows: single with Medicare Parts A and B—\$96.15; single with Medicare Part A only—\$136.20; retiree and spouse with Medicare Parts A and B—\$190.50; retiree and spouse with Medicare Part A only—\$270.60; and retiree with one or two members under Medicare and dependents not under Medicare—\$296.33.

During the 1987-88 interim, the Public Employees Retirement System Board contracted with a consulting firm for an actuarial study concerning the prefunding of retiree health benefits of current and future retirees under the Public Employees Retirement System. The report of the consulting actuary, dated October 6, 1988, indicated that rapidly increasing Medicare costs and increasing retiree premiums under the Public Employees Retirement System health benefits plan have contributed to a relatively low level of participation by eligible retirees in the plan. As of that date, only 56 percent of the 1,841 current eligible retirees participated in the plan. The consulting actuary indicated that a temporary abatement in the level of health care costs experienced on a national basis in 1985 and 1986 has been followed by renewed substantial increases in 1987 and 1988. Health insurance carriers are now requesting rate increases ranging from 15 percent to 40 percent. In light of these medical care inflation trends, the costs of retiree health coverage available through the Public Employees Retirement System health benefits plan will become even less affordable for most retirees. The consulting actuary predicted that if retiree health insurance costs under the Public Employees Retirement System health benefits plan become unaffordable to eligible retirees, only those retirees and their dependents who have serious

known medical ailments will continue to participate in the plan, which will inevitably result in a shift in costs to those active employees participating in the plan.

During the 1987-88 interim, the Public Employees Retirement System consulting actuary presented alternate solutions to problems associated with retiree health insurance benefits, including the possibility of reducing health care benefits for retirees under the Public Employees Retirement System health benefits plan or increasing the level of retirement income benefits under the Public Employees Retirement System retirement plan. The actuary explained that reducing retiree health care benefits would not only dilute the level of protection for retirees from substantial health care expenses but would not protect the Public Employees Retirement System health benefits plan from possible adverse selection. Simply increasing the level of retirement income benefits received by retirees would not address anticipated increased adverse selection and would not assure increased participation in the plan. In addition, increasing retirement income benefits would result in a tax disadvantage to retirees because retirement income benefits are subject to federal and state taxation while contributions made to a prefunded program enjoy a tax-favored status.

The consulting actuary suggested that the most effective approach to financing retiree health benefits is to prefund those benefits in a manner that will reduce the contribution levels required of retirees participating in the Public Employees Retirement System health benefits plan. There are primarily two methods of financing retiree health benefits—pay-as-you-go or prefunding. Most retirement health benefits are financed on a pay-as-you-go basis, which means that the long-term survival of the plan depends on annual increases in contributions over a long period of time. A prefunding approach, similar to that used for funding a retirement system, requires that amounts be contributed by either the employer or employee, or both, to the plan in order to ensure the continuation of benefits for the lifetime of current retirees and to ultimately establish a reserve sufficient to provide benefits for future retirees.

The Public Employees Retirement System consulting actuary indicated that a prefunding credit would accomplish two objectives. First, it would diminish anticipated problems with adverse selection with the Public Employees Retirement System health benefits plan and, second, it would make it possible to maintain the plan on a group basis. The consulting actuary recommended, based on long-range expected costs, that retirement contributions under the Public Employees Retirement System plan equal to one percent of salaries and wages of participating members be utilized to prefund retiree health benefits under the Public Employees Retirement System health benefits plan. To guard against any commitment that would expose the state to the full impact of spiraling medical costs, the consulting actuary recommended that contributions to retiree health benefits be based on a fixed-contribution years-of-service formula that would specify a particular credit for each eligible retiree based on years of service and be limited to the total monthly cost of coverage selected by that retiree.

The bill recommended by the Retirement Committee, Senate Bill No. 2068, incorporated the consulting actuary's recommendation that the initial "fixed-dollar" portion of the credit formula be set at \$3 per month per year of service which represented the state assuming, in the aggregate, approximately 33 percent of the projected 1989-90 retiree health insurance costs.

Senate Bill No. 2068 - Prefunding of Retiree Health Coverage for Retired Members of PERS and the Highway Patrolmen's Retirement System

As previously indicated, the Retirement Committee, during the 1987-88 interim, recommended to the Legislative Council Senate Bill No. 2068 which established a retiree health benefits fund account with the Bank of North Dakota for the purpose of prefunding hospital benefits coverage and medical benefits coverage under the uniform group insurance program for retired members of the Public Employees Retirement System and the Highway Patrolmen's Retirement System receiving retirement benefits or surviving spouses of those retired members who were eligible to receive, or were receiving, retirement benefits. The bill passed both the Senate and the House of Representatives without a negative vote. The bill reduced the employer contribution under both the Public Employees Retirement System and the Highway Patrolmen's Retirement System by one percent of the monthly salaries or wages of participating members, including participating supreme and district court judges, and redirected those moneys to the retiree health benefits fund by requiring the state and other participating employers to contribute one percent of monthly salaries and wages to the health benefits fund. The retiree health benefits fund is administered by the Public Employees Retirement System Board, which is required to adopt rules necessary for the proper administration of the fund, including enrollment procedures. The bill provides for the investment and disbursement of moneys of the retiree health benefits fund and administrative expenditures to be made in the same manner as moneys of the Public Employees Retirement System are invested, disbursed, or expended. The bill provides a fixed-dollar, year-of-service credit formula for the calculation of the allowable monthly credit toward hospital and medical benefits coverage under the program for eligible persons in an amount equal to \$3 multiplied by the member's or deceased member's number of years of service and prior service employment under the Public Employees Retirement System or the Highway Patrolmen's Retirement System. Reduction factors apply to eligible retirees receiving early retirement benefits or their surviving spouses.

The 1987-88 Retirement Committee, when considering the issue under one of its directives to study the provision of adequate and affordable health insurance coverage for retired public employees, recommended Senate Bill No. 2068 in light of its further recommendation that the Legislative Council study the provision of adequate and affordable health insurance coverage for retired members of other state retirement plans for which no funding mechanism was available or identified during the 1987-88 inter-

im. Retired members of the Public Employees Retirement System and the Highway Patrolmen's Retirement System were covered under Senate Bill No. 2068 because those funds were actuarially overfunded as of July 1, 1988, i.e., state contributions exceeded the actuarial requirements of each fund, providing an ample funding source for the provision of retiree health benefits.

Other State Retirement Plans Whose Members Are Not Eligible for Prefunding of Retiree Health Coverage

Retired state employees and officials not participating in the Public Employees Retirement System or the Highway Patrolmen's Retirement System include members of other state employee retirement programs for which statutory authority exists. A description of each of these retirement programs follows:

- Chapter 52-11 authorizes Job Service North Dakota and the North Dakota National Guard to establish jointly or severally employee retirement programs by contract with an insurance company or other authorized entity. The Job Service private pension plan, known as the Travelers Plan, is being phased out and all new employees as of October 1980 are members of the Public Employees Retirement System along with those employees who chose to transfer to the Public Employees Retirement System from the private insurance carrier. The North Dakota National Guard has not chosen to establish an employee retirement program under this chapter but is under a federal retirement program. Members of the Travelers Plan currently participate in the uniform group insurance program.
- Chapter 52-09 establishes the Old-Age and Survivor Insurance System (OASIS) for state and political subdivision employees. The provisions of this chapter, which were enacted in 1947, are being phased out since the transfer of that program by the state to federal Social Security in 1957. The program is still in existence for paying claims established prior to April 1957, for refunds of employees' contributions, and for collection of federal Social Security taxes that are imposed as necessary to fund the program. As of May 1989 there were five primary insured members and 67 survivors receiving benefits.
- Chapter 27-17 provides a retirement program for some supreme and district court judges. This retirement program was closed to new Supreme Court and district court judges as of July 1, 1973. All new Supreme Court and district court judges are now required to become members of the Public Employees Retirement System.
- Chapter 15-39.1 establishes the Teachers' Fund for Retirement. This fund was established in 1971 and is the current teacher retirement law for teachers not participating in the previous Teachers' Insurance and Retirement Fund or the alternate retirement program for teachers under the jurisdiction of the State Board of Higher Education, the Teachers' Insurance and Annuity Association of America-College Retirement

Equities Fund (TIAA-CREF). As of June 30, 1989, there were 11,621 nonretired participants in the Teachers' Fund for Retirement of which 9,785 earned service credit during the fiscal year ending June 30, 1989. As of that same date, there were 3,862 pensioners and beneficiaries receiving benefits.

- Chapter 15-39 established the Teachers' Insurance Retirement Fund. This fund, the rights to which were preserved by the provisions of Section 15-39.1-03, provides a fixed annuity for those full-time teachers whose rights vested in the fund prior to July 1, 1971. This fund was closed when the Teachers' Fund for Retirement was established in 1971.
- Chapter 15-39.2 provides various retirement options for certain classifications of retired teachers under the Teachers' Insurance Retirement Fund, Teachers' Fund for Retirement, or TIAA-CREF.
- Section 15-10-17(13) allows the State Board of Higher Education to establish a retirement program as an alternative to the Teachers' Fund for Retirement for employees of institutions under its control. The alternate retirement program is established by private contract with TIAA-CREF. Members of this retirement program currently participate in the uniform group insurance program.

Retiree Health Insurance Plans of Other States

1. Summary of the States

A 1989 benefits survey prepared by Workplace Economics, Inc., based on a survey reflecting policies in effect in each state as of January 1, 1989, indicates that 49 of the 50 states provide, or make available, health insurance coverage for retirees. The survey notes that even in the states that do not contribute any money toward the premium cost, the availability of group rates will usually result in some savings compared to what it would cost the retiree for similar coverage if purchased in a nongroup setting. The other 29 states paid for all or some portion of a retired employees' health insurance premium. In eight of these latter states, according to the survey, the arrangement is based on the same employer/employee cost sharing formula which applies to active employees.

2. Recent State Studies

Montana

In 1985 the Montana Legislature enacted a bill to create the Select Committee on Health Insurance for Retired Public Employees (Montana committee) to explore the possibility of creating a wholly or partially state-funded health insurance program for retired public employees. The committee hired a consultant to assist in data collection and cost analysis of health insurance proposals, and conducted a survey of retired public employees to obtain data on retiree health insurance coverage. The committee concluded that the cost of health premiums can pose a considerable financial burden on retired public employees

living on fixed incomes. However, given "significant economic problems facing Montana," the committee determined that it could not responsibly support a postretirement health care program that would financially obligate the state. The committee recommended that, if the economic conditions of the state improve, future legislatures review the extensive data compiled by the committee and consider enacting legislation to assist current and future retirees to meet their health care needs.

The Montana committee was presented several legislative options concerning postretirement health care benefits for public employees, including designing a separate health insurance plan for retired public employees, permitting retirees to apply accrued sick leave credits toward premium payments, creating a trust fund for active employees, paying a portion of retirees' premiums from retirement funds, and enacting an automatic cost-of-living adjustment for public pension plans in lieu of paying a part of retiree health insurance premiums. A brief description of each of the options is set forth below.

Separate Health Insurance Plan for Retirees.

One of the first options considered by the Montana committee was to require public employers to offer within the same master contract covering active employees an optional health insurance plan for retirees only. Under the proposal, the experience rating of the entire group would be used to set the premium rates for the retiree plan. The plan would be available to all retirees regardless of age. The proposal was constructed so that the premium for the plan would be substantially less than the premium under the active group plan because coverage under the plan would be tailored to meet the needs of elderly persons and the plan would have a higher deductible than the active employee group plan. For example, it was discussed that coverage for medical services that are available under the active employee group plan which are least likely to be used by retirees, e.g., maternity benefits, would be eliminated. A disadvantage cited concerning this option was that since elderly persons tend to be heavier users of health care services than other persons, isolating them as a group could prove costly. In addition, it was discussed that there may be additional administrative expenses associated with creating and operating a separate retiree plan.

Based on comments received from retirees and others, the Montana committee concluded that few retirees would join an optional plan with a high deductible and scaled-down benefits; generally retirees would prefer to have comprehensive coverage despite having to pay a higher premium.

Using Accrued Sick Leave. At least four states (Idaho, New York, West Virginia, and Wisconsin) permit retirees to apply unused sick leave credits toward payment of their health insurance premiums. In Wisconsin, for example, a retiring employee's accrued sick leave is converted, at the employee's current basic pay rate, to credits for payment of health insurance premiums. The retiree's full premium is deducted from the credits until the credits are exhausted. The employee may elect to delay initiation of deductions for up to five years after the date of retirement if that employee is covered by a com-

parable health insurance plan or policy between the date of retirement and the time the employee elects to initiate deductions from the employee's sick leave credits. A health insurance plan or policy is considered comparable if it provides hospital and medical benefits which are substantially equivalent to the state's standard health insurance plan [Wis. Stat. Ann. § 40.05]. In West Virginia, a retiring employee's accrued sick leave is credited toward an extension of the employee's insurance coverage. A retiree receives, at no cost, an additional month of single coverage for every two days of accrued sick leave and an additional month of family coverage for every three days of accrued sick leave. A West Virginia retiree also may use this formula to apply accrued annual leave toward an extension of insurance coverage [W. Va. Code § 5-16-12]. In Idaho, each employer must contribute a percentage of employees' salaries as determined by the state's Public Employees Retirement System Board to a sick leave account maintained by the state's Public Employees Retirement System. Upon retirement, an employee's accrued sick leave, up to a maximum of 336 hours (42 days), is converted to a dollar amount based on the employee's hourly wage at the time of retirement. This amount is then transferred from the sick leave account and credited to the employee's retirement account to pay health insurance premiums [Idaho Code § 67-5339].

The advantages of permitting retirees to apply accrued sick leave credits toward premium payments, as discussed by the Montana committee, include the creation of an incentive to reward retirees based on their years of service, and the possibility that the option could act as a deterrent for sick leave abuse among active employees, if such abuse exists. Disadvantages cited included consideration that the option provides retirees with financial assistance for only a limited amount of time following retirement.

In Montana a public employee upon termination is entitled to a lump sum payment equal to one-fourth of the pay attributed to the accrued sick leave which is computed on the basis of the employee's salary at the time of termination. The Montana committee considered a proposal that would entitle a retiree who chose to remain as a member of the state's group health insurance plan to receive either the lump sum payment provided by law or apply an amount equal to one-third of the value of the employee's unused sick leave toward payment of the employee's health insurance premium. If the retiree chose to apply accrued sick leave to premium payments, the retiree's former employer would transfer each month to the group insurance carrier an amount equal to the retiree's total monthly premium. These payments would begin immediately following the retiree's date of retirement. The employer would continue to pay the retiree's premium until a dollar amount equal to one-third of the retiree's unused sick leave credits was paid to the carrier. The retiree then would be responsible for future premium payments. The Montana committee initially modified the proposal to repeal the statutory provision permitting an employee upon termination of employment to receive a lump sum payment equal to the value of the employee's accrued sick leave due to concerns with the unfunded liability associated with the sick leave

payout provision. Other committee members expressed concern that the purpose of providing sick leave benefits should be to offer workers some financial protection if illness or injury occurred while they were employed, not to reward them with a lump sum payment upon termination. The committee included the modified proposal in its final report without recommendation.

Trust Fund for Active Employees. Another method for funding postretirement health care benefits considered by the Montana committee was to establish a trust fund to which contributions would be made during an employee's working years. Under this option, contributions to the fund, based on a percentage of participating employees' salaries, could be made by the employees, their employers, or both. Upon retirement, an employee who elected to remain a member of his or her employer's group health insurance plan would be eligible to have a portion of the employee's premium paid from the fund. Advantages of the trust fund option include assuring active employees some assistance in meeting their postretirement health care costs by setting aside funds throughout their working lifetimes and providing a less costly mechanism for providing retiree health benefits rather than paying on a pay-as-you-go basis. A disadvantage cited was that if the required employee and/or employer contribution rates were too high there would be resistance to the option from those required to make the contributions. Also cited was the fact that there would be some expense associated with administering the trust fund. The Montana committee considered two proposals relating to the trust fund option. A main difference between the two proposals was that only one of the proposals assisted current, as well as future, retirees with health care expenses. Because of budget constraints and other considerations, the committee did not recommend either proposal.

Texas recently created a trust fund to finance its retired school employees group insurance program. Active employees and the state contribute to the fund which is used to pay premiums to the carriers providing group coverage. The basic level of coverage is available to each eligible retiree at no cost, and retirees may purchase optional coverage through a deduction in their monthly retirement allowance. Colorado recently established a group health insurance plan and supplemental plan for retired public employees and provided partial prefunding of the program utilizing a health insurance reserve fund consisting of accumulated deductions from monthly payments made by participating retirees and their dependents, accumulated contributions made to the fund by the state and other public employers, and investment income earned on the money in the fund.

Paying a Portion of Retirees' Premiums from Retirement Funds. The Montana committee considered public retirement system funds as a possible revenue source for paying a portion of retiree health insurance premiums. This was the revenue source for funding the retiree health benefits provided under Senate Bill No. 2068. In Montana, as in North Dakota, the legislature has in the past used these funds to enhance retirement benefits. Of course, this

option would require consideration of whether or not it could undermine the actuarial soundness of the applicable retirement fund and jeopardize payment of retirement benefits.

Automatic Cost-of-Living Adjustment.

Another option presented to the Montana committee was the creation of an automatic cost-of-living increase for public pension plans to provide retirees with more income from which to meet their health care expense needs.

Kansas

In 1987 the Kansas Legislature appropriated \$25,000 for a consultant's study during the 1987 legislative interim concerning issues relating to the establishment of a health care benefits plan for retirees of the Kansas Public Employees Retirement System, including who should participate in such a plan; the appropriate level of benefits for retirees; and how such a plan should be operated, financed, and administered.

The final report concerning the study indicates that the broad subject of postretirement health care encompasses all the issues related to the design and financing of health benefit plans and may be viewed essentially as a retirement issue rather than a health benefits issue. The report indicates that the shortfall in Medicare coverage for retirees over age 65 creates an unfair burden on the limited resources of state and local public retirees. To address this problem, the committee to which the study was assigned recommended that a bill be introduced that would establish a retiree health care benefit program for all public employee retirement system retirees age 65 or over who elect to participate in the plan. The bill provided that the Kansas Public Employees Retirement System board of trustees would be responsible for administration and operation of the retiree health care benefit program and would also determine the amount of funds that the employer and retiree would pay for the retiree health care program. Employer and retiree contributions would have been accumulated in a "retirant health care benefit program reserve" to be charged with all costs required for the retirant health care benefit program. However, according to the Kansas Legislative Coordinating Council, the bill failed to pass in the 1988 Kansas Legislature.

Testimony and Committee Considerations

Health Insurance Coverage for Retired Teachers

The committee received testimony from representatives of the Teachers' Fund for Retirement, North Dakota Education Association, the North Dakota Council of School Administrators, the North Dakota School Boards Association, and the North Dakota Retired Teachers Association concerning the health insurance coverage for retired public employees study. These representatives indicated that health insurance costs are the largest nonsalary personnel costs in school district budgets and that many retired teachers in the state experience difficulty in finding adequate and affordable health insurance. The committee learned that retired teachers

generally transfer from the group medical insurance offered by school districts to bank depositors groups when they retire and thus lose the advantage of group insurance which results in higher premiums. A representative of the North Dakota School Boards Association informed the committee that the School Boards Association supports the concept of providing good, adequate, and reasonably priced insurance for retirees. School boards have a difficult time attracting quality teachers to the state and even more difficulty in retaining quality teachers because of the limited economic package the school boards of North Dakota are able to offer. A representative of the North Dakota Retired Teachers Association indicated that the association supports the establishment of a state plan providing retiree health insurance benefits for retired members of the Teachers' Fund for Retirement.

Representatives of the North Dakota Education Association surveyed the association's members who were active members of the Teachers' Fund for Retirement concerning the possibility of providing health insurance benefits to retired teachers. Of the 126 surveys returned, 53.1 percent of the males and 67.7 percent of the females indicated support for an assessment of one percent of teachers' salaries to assist in the payment of medical insurance premiums during retirement.

The executive director of the North Dakota Teachers' Fund for Retirement requested that the fund's actuarial consultant prepare an analysis of a prefunded retiree health benefit plan modeled on the North Dakota Public Employees Retirement System prefunded health trust plan. The table that follows outlines the actuary's funding analysis for this proposal.

Contribution Requirement Early Retirement Reduction Alternative I			
	Benefit Per Year of Service		
Participation Level	\$2	\$3	\$4
50%	.70%	1.05%	1.40%
60%	.84%	1.26%	1.67%
75%	1.05%	1.57%	2.09%
100%	1.40%	2.09%	2.79%
Contribution Requirement Early Retirement Reduction Alternative II			
	Benefit Per Year of Service		
Participation Level	\$2	\$3	\$4
50%	.73%	1.09%	1.45%
60%	.87%	1.31%	1.74%
75%	1.09%	1.63%	2.18%
100%	1.45%	2.18%	2.90%

Under early retirement reduction Alternative I, benefits are reduced by three percent for the first year of early commencement and six percent per year thereafter. The reduction is computed with reference to age 65. Under early retirement reduction Alternative II, benefits are reduced by three percent for the first year of early commencement and six percent per year thereafter. However, the reduction is computed with the reference to the earlier of age 65 or the age at which the Rule of 85 would be attained. The retiree health benefit would be used to offset the premium cost of participation in the medical plan for retirees. Under the proposal, alternative assumptions for participation levels of 50 percent, 60 percent, 75 percent, and 100 percent were analyzed.

The committee considered a proposal to establish a teachers' retiree health benefits fund. The fund would be administered by the Public Employees Retirement System Board for the purpose of prefunding and providing hospital benefits coverage and

medical benefits coverage for retired eligible teachers or surviving spouses of retired eligible teachers and their dependents. The fund would be funded through a monthly contribution in an amount equal to .75 percent per annum of the salary of each teacher. Non-public schoolteachers would be entitled to elect whether to participate in the teachers' retiree health benefits fund. Every person who is receiving monthly benefits from the Teachers' Fund for Retirement on an account paid under Chapter 15-39.1, under former Chapter 15-39, or who is a nonpublic schoolteacher who has elected to participate would be entitled to receive a monthly credit toward hospital and medical benefits coverage in an amount equal to \$2 multiplied by the person's or deceased person's number of years of credited service. For a person receiving an early retirement benefit or the surviving spouse of that person, the allowable monthly credit would be actuarially reduced to account for benefit payments beginning prior to the normal retirement date. This

reduction would apply from the earlier of age 65 or the age that when combined with that person's years of service credit equals 85.

Health Insurance Coverage for Retirees Under the Teachers Insurance Annuity Association - College Retirement Equities Fund (TIAA-CREF) Retirement Plan

The committee examined whether members of TIAA-CREF should be entitled to participate in the retiree medical benefits program. Many of the 3,074 employees contributing to the TIAA-CREF retirement plan for entities under the Board of Higher Education as well as the 500 to 600 former employees receiving benefits under the TIAA-CREF plan indicated that the costs associated with health insurance are a deep concern of theirs. They indicated that extension of the 1989 legislation providing retiree health benefits for certain public employees to include TIAA-CREF participants and other public employees would provide a major benefit to these members when they retire.

However, testimony received by the committee indicated that it would probably not be acceptable to TIAA-CREF members to use any part of what is currently contributed to TIAA-CREF to prefund retiree health benefits. It was estimated that based on the \$3 per month fixed formula and assuming that each retiree had 30 years of service credit it would cost approximately \$1 million a biennium to fund retiree health benefits for the approximately 600 TIAA-CREF retirees. In sum, although members of TIAA-CREF would receive some benefit from prefunding retiree health benefits the committee received evidence that obtaining this benefit would not be sufficient to warrant using one percent of members' salaries to prefund those benefits in lieu of using that amount for an annuity— independent of the fact that TIAA-CREF is instantly vested and is portable. It was suggested that TIAA-CREF members not be included in the PERS retiree health benefits program if the method for funding that participation is an assessment of salary.

Health Insurance Coverage for Chapter 27-17 Judges

The committee received information that while most state judges participate in the PERS retirement plan and therefore are eligible for prefunding of retiree health benefits under 1989 Senate Bill No. 2068, four active state judges and 30-35 individuals, including retirees and surviving spouses of retirees who receive benefits under Chapter 27-17, are not eligible for prefunding of retiree health benefits. Retirement Bill No. 6, discussed above, contains a provision including retired judges under Chapter 27-17 in the PERS retiree health benefits program. The bill would increase the benefit multipliers applicable to supreme and district court judges, and temporarily reduce the employer contribution for supreme and district court judges under the PERS plan and increase the employee contribution under the PERS retiree health benefits program to fund the inclusion of judges retired under Chapter 27-17.

Health Insurance Coverage for Retirees Under the Job Service North Dakota Travelers Retirement Plan

The committee received testimony that the Job Service North Dakota Travelers Retirement Plan was established in cooperation with the United States Department of Labor in 1961 for Job Service North Dakota employees along with five other states in which there were no statewide retirement systems for state employees. On October 1, 1980, the Department of Labor decided to no longer allow new enrollments into independent retirement systems within the six states that had those systems. As a result of this action, the Job Service Travelers Retirement Plan was "frozen" and all new employees hired after October 1, 1980, were enrolled in the PERS retirement plan. There are 100 retired members and 201 active members of the Travelers Retirement Plan. Two hundred twenty-five other Job Service employees participate in the Public Employees Retirement System. Members of the Traveler's Retirement Plan were not included as eligible participants in the 1989 legislation that authorized the prefunding of retiree health benefits. At the time the Department of Labor froze the Traveler's Retirement Plan it was agreed that the Department of Labor would amortize the cost of the employers' unfunded liability whereby Job Service North Dakota presently receives an annual allocation for increase in federal grants to provide for the amortization of the past service cost of the retirement plan.

The committee considered a proposal to include members of the Job Service North Dakota Travelers Retirement Plan under the Public Employees Retirement System retiree health benefits program. Under the proposal members of the travelers plan and their surviving spouses would be allowed to receive the allowable monthly credit provided under the retiree health benefits program in an amount equal to \$3 multiplied by a participating member's number of years of credited service under the travelers plan, with a reduction factor applied to members who receive early retirement benefits. These benefits would be funded on a direct reimbursement basis. Job Service North Dakota would be required to reimburse the retiree health benefits fund on a monthly basis for credit received by travelers plan members. Because of the direct reimbursement method used for funding the inclusion of travelers plan members in the Public Employees Retirement System retiree health benefits program, their inclusion would not have a negative actuarial impact on the retiree health benefits fund.

Health Insurance Coverage for the Public Employees Retirement System Prior Service Retirees

The committee also reviewed actuarial information relating to the inclusion of Public Employees Retirement System prior service retirees in the retiree health benefits program based on the years of service of these employees.

Public Employees Retirement System Prefunded Retiree Health Benefit Plan Benefit Increase

At the request of the Public Employees Retirement System Board, the board's consulting actuary reviewed a proposal to increase the benefit formula under the prefunded retiree health benefit plan from the current \$3 per year of service level to \$4 per year of service. The consulting actuary estimated the actuarial cost impact of increasing the benefit formula from \$3 to \$4 to be .35 percent of covered compensation with the total required contribution being 1.43 percent of July 1, 1989, covered compensation.

Recommendations

The committee waives jurisdiction over a bill to provide for inclusion of members of the Job Service North Dakota Travelers Retirement Plan in the Public Employees Retirement System retiree health benefits program for purposes of allowing Job Service North Dakota to introduce the proposal in the 1991 legislative session.

The committee waives jurisdiction over a bill to establish a retiree health benefits fund account with the Bank of North Dakota for the purpose of prefunding and providing hospital benefits coverage and medical benefits coverage for retired eligible teachers or surviving spouses of retired eligible teachers and their dependents for purposes of allowing the bill to be introduced in the 1991 legislative session.

PROVISION OF LEVEL RETIREMENT BENEFITS UNDER THE TEACHERS' FUND FOR RETIREMENT STUDY

House Concurrent Resolution No. 3060 directed a study of the feasibility and desirability of providing level retirement benefits to all retirees under the Teachers' Fund for Retirement.

Background

The Teachers' Fund for Retirement and its predecessor fund constitute the oldest state retirement fund in North Dakota. Former NDCC Chapter 15-39 established the predecessor fund to the Teachers' Fund for Retirement, known as the Teachers' Insurance and Retirement Fund, through enabling legislation enacted in 1913. This fund, the rights to which were preserved under the Teachers' Fund for Retirement (NDCC Section 15-39.1-03), provides a fixed annuity for full-time teachers whose rights vested in the fund before July 1, 1971. The statutory provisions of the plan were repealed in 1971 when the Teachers' Fund for Retirement was established with the enactment of NDCC Chapter 15-39.1.

The study resolution recognized that the Teachers' Fund for Retirement utilizes a variety of retirement benefit formulas that provide different levels of benefits for fund members, and that over 50 percent of the persons receiving retirement benefits under the Teachers' Fund for Retirement receive retirement benefits based on benefit formulas created under the former Teachers' Insurance and Retirement Fund. The resolution recognized that most retirees receiving benefits based on benefit formulas created under the former Teachers' Insurance and Retirement Fund do not receive Social Security benefits and receive an

inadequate level of retirement benefits. The resolution noted that although recent retirement benefit increases for retirees under the Teachers' Fund for Retirement have been beneficial, those benefit increases have not been sufficient to provide retirees a standard of living commensurate with service they provided to the state.

Teachers' Fund for Retirement

Prior to the enactment of legislation by the 1989 Legislative Assembly, the Teachers' Fund for Retirement plan provided a retirement benefit of 1.22 percent of final average monthly salary times the number of years of teaching service. Final average salary is defined as 1/36 of the total of the member's highest annual salaries for any three years of service under the fund. Full benefits are payable when the teacher has completed five years of teaching credit and is at least 65 years of age, or when the teacher has a combined total of years of service credit and years of age that is equal to at least 90 if one year of that credit was completed after July 1, 1979. The plan provides for a minimum benefit for post-1970 retirees of \$6 per month per year of teaching for the first 25 years of service and \$7.50 per month of teaching credit for service over 25 years. This minimum benefit was provided in 1977.

The 1989 Legislative Assembly passed House Bill No. 1094 which increased the benefit multiplier from 1.22 to 1.275 percent of average salary. House Bill No. 1233 also enacted by the 1989 Legislative Assembly raises the contribution made by teachers and employers to the Teachers' Fund for Retirement from 6.25 percent to 6.75 percent. The additional contribution was necessary to fund a change in the eligibility rule for receiving benefits which provides that members who have a combined total of years of service credit and years of age which equals 85, rather than 90, are eligible to receive monthly lifetime retirement benefits.

After retirement, benefits are adjusted as deemed necessary by the Legislative Assembly. A 1983 postretirement adjustment, codified as NDCC Section 15-39.1-10.1, entitled every person receiving benefits from the fund to a benefit increase equal to 15 percent of that person's present annuity up to \$45 per month and not less than \$1 per month per year of teaching credit. A 1985 postretirement adjustment, codified as NDCC Section 15-39.1-10.2, entitled every person receiving monthly benefits from the fund to a benefit increase equal to one percent for each year the person has been retired under the fund, but no more than 10 percent or more than a \$40 per month increase in benefits. A 1987 postretirement adjustment, codified as NDCC Section 15-39.1-10.4, entitles every individual receiving benefits from the fund under the provisions of the former Teachers' Insurance and Retirement Fund to a monthly benefit increase of \$15 plus \$1.50 for every year benefits have been drawn from the fund, not exceeding an increase of \$75 per month. That section also entitled any individual receiving benefits from the Teachers' Fund for Retirement to a monthly benefit increase of \$1.50 for every year benefits have been drawn from the fund. A 1989 postretirement adjustment, provided by House Bill No. 1094, entitles every individual receiving monthly

benefits from the fund paid under the Teachers' Fund for Retirement or the former Teachers' Insurance and Retirement Fund to a benefit increase equal to five cents times the individual's number of years of service credit under the fund times the number of years the individual has drawn benefits from the fund. Postretirement adjustments were also made in optional forms in 1973 for retired members of the former Teachers' Insurance and Retirement Fund.

The Teachers' Fund for Retirement also provides a reduced early retirement benefit, payable at age 55 after five years of service. Disabled teachers are entitled to receive a benefit equal to the greater of 20 percent of the teacher's last annual salary or a normal retirement pension computed without consideration for the disabled teacher's age.

Teachers' Insurance and Retirement Fund

Prior to its repeal in 1971, the Teachers' Insurance and Retirement Fund provided a benefit formula-type of retirement system for public schoolteachers and university and college teachers, who are divided into two separate groups for some purposes of the retirement plan. Although the plan provided varying benefit formulas and contribution rates since its inception in 1913, the following is a description of the plan as it existed immediately prior to its repeal.

Contributions for public schoolteachers were based on three percent of the annual covered salary, with the first \$7,500 of annual salary being defined as covered salary. Two percent of the annual covered salary was contributed by the employer. College and university teachers participating in the plan contributed four percent of their salary to a maximum of \$120 annually for the first eight years of employment, five percent of salary to a maximum of \$180 annually for the second eight years of employment, and six percent of salary to a maximum of \$200 thereafter. Each employer matched the contribution paid by the respective college or university teacher, except the amount of the contribution was limited to \$50 annually for a teacher within that teacher's first eight years of employment, and \$120 annually thereafter. Both public school and higher education teachers were eligible for full retirement benefits after 25 years of service and attaining the age of 55. Reduced benefits were available after 10 years of service, again at age 55. The amount of monthly annuities for each class of teacher varied. Public schoolteachers were eligible for an annual annuity calculated at two percent of the salary upon which contributions were paid, with a monthly minimum of \$75 and a maximum of \$125. In addition, \$10.42 was added monthly to annuities between the minimum and the maximum for each year of service in excess of 25 years beyond which a retired person taught. The monthly increment added to annuities over the maximum was \$6.25 for each additional year of service. Higher education teachers received annuities under the same schedule, except that the minimum annuity was calculated at \$60 monthly and the maximum at \$100 monthly, plus \$5 and \$8.33 added per month to the maximum and minimum, respectively, for each year of service in excess of 25 years. Disability benefits were available for both classes of teachers after the completion of 15 years of teaching service.

A death benefit before retirement, again the same in both categories, was included in the plan, and amounted to a refund to the beneficiary of one-half of employee contributions prior to July 1, 1947, and all of such contributions after that date with interest. Refunds for termination of employment were permitted, with the amount returned equal to the amount of the death benefit for both classes of teachers except that interest was not given. If the member had at least 10 years of service, the member was allowed to leave the member's contribution with the fund and elect to take a deferred annuity beginning at age 55 in an amount equal to the regular retirement benefit multiplied by the ratio of the years of service to 25.

Membership Characteristics, Benefit Formulas, and Contribution Rates Under the Teachers' Fund for Retirement

The latest available report of the consulting actuary for the Teachers' Fund for Retirement is dated July 1, 1989. According to the report, on that date the fund had total assets with an actuarial value of approximately \$385.8 million and a market value of approximately \$412.6 million. There were 11,621 nonretired participants in the Teachers' Fund for Retirement of which 9,785 earned the service credit during the fiscal year. On June 30, 1989, a total of 3,862 individuals were receiving retirement benefits under the Teachers' Fund for Retirement plan, compared with 3,892 receiving benefits a year earlier. The average monthly benefit for all retired members was \$361, compared to an average of \$352 as of the end of fiscal year 1988. Of the 3,862 pensioners and beneficiaries, approximately 10 percent are under the age of 65 years, 38 percent are 65 years of age through 74 years of age, and 52 percent are 75 years of age or older. Approximately two percent of the pensioners and beneficiaries were receiving monthly benefits of less than \$100 and 40 percent were receiving at least \$300. Therefore, a majority of the pensioners and beneficiaries were receiving between \$100 and \$300 in monthly benefits. Benefit payments in fiscal year 1988-89 totaled \$20,281,837, including refund payments of \$3,276,435.

Retirees under the Teachers' Fund for Retirement have retired under a variety of different formulas, including formulas under the former Teachers' Insurance and Retirement Fund. A comparison of the different formulas affecting current retirees under the Teachers' Fund for Retirement and the former Teachers' Insurance and Retirement Fund are described below in a schedule prepared by representatives of the Teachers' Fund for Retirement.

Retirement Formulas Affecting Current Retirees

A. Chapter 15-39

Pre-1967

- 2% of total earnings with minimum benefit \$600—maximum \$1,200.
- Must be age 55 with 25 years of service to qualify.
- Actuarially reduced annuity could be drawn at age 50 with 25 years of service credit.

1967 Formula

- 2% of total earnings with minimum benefit \$720—maximum \$1,200.
- Must be age 55 with 25 years of service to qualify.
- Minimum amount of \$1,200 if retirement age 70 or greater.
- Members over age 55 with greater than 25 years of service and at the maximum (\$1,200) receive an additional \$5 per month for each year over 25 years.

1969 Formula

* Less than 25 years of service.

- Total salaries divided by years of service. If greater than \$3,000, then years of service times \$60 is the annual annuity. If less than \$3,000, total salaries times two percent is the annual annuity.
- Minimum benefit—\$300.
- Must be age 55 with 10 years of service to be eligible.

* More than 25 years of service.

- Total salary through 25 years times two percent (minimum \$900, maximum \$1,500) plus an additional amount for years over 25 years.
- Must be age 55 to be eligible.

B. Chapter 15-39.1

1971 Formula

- Average monthly salary for 1970-71 times one percent times years of service earned through June 30, 1971, plus total salary earned after July 1, 1971, divided by the number of years earned after July 1, 1971, (calculate average monthly salary) times 1.5 percent times years of service earned since July 1, 1971.
- Must be age 65 with 10 years of service to be eligible.
- Reduced benefits available for early retirement at age 55.

1975 College Formula

- Final salary times one percent less TIAA-CREF offset or 1967 formula, whichever is greater.

1979 Formula

- Average of five high salaries in last 10 years taught times one percent times years of service.
- Must be age 65 with 10 years of service to be eligible.
- Reduced annuity at age 55 for early retirement.

1983 Formula

- Average of three high salaries in last 10 years taught times 1.05 percent times years of service.
- Must be age 65 or have the Rule of 90 to be eligible.
- Reduced annuity at age 55 for early retirement.

1985 Formula

- Multiplier changed to 1.15 percent, remainder same as 1983 formula.

1987 Formula

- Average of three high salaries in career times 1.22 percent times years of service.
- Remainder same as 1983 formula.

1989 Formula

- Multiplier changed to 1.275 percent and Rule of 85 replaced Rule of 90. Vesting is the same.

Although retirees received benefits under a variety of different formulas, the contribution rates under which those retirees participated also varied between the former and current plans. A comparison of these assessment and contribution rates is described below in a schedule prepared by representatives of the Teachers' Fund for Retirement.

Schedule of Assessments and Contributions for Public Schools and State Institutions

A. Chapter 15-39

From July 1, 1913, to June 30, 1941

1% - first 10 years - maximum \$20.00

2% - next 15 years - maximum \$40.00

From July 1, 1941, to June 30, 1947

1% - first 8 years - maximum \$20.00

2% - next 8 years - maximum \$40.00

3% - next 9 years - maximum \$60.00

From July 1, 1947, to June 30, 1949

2% - first 8 years - maximum \$40.00

District matches in like amount

4% - next 8 years - maximum \$80.00

District matches in like amount

6% - thereafter - maximum \$120.00

District matches in like amount

From July 1, 1949, to June 30, 1955

4% - first 8 years - maximum \$50.00

District matches in like amount

4% - next 8 years - maximum \$120.00

District matches in like amount

6% - thereafter - maximum \$180.00

District matches at 4% - maximum \$120.00

From July 1, 1955, to June 30, 1969

4% - first 8 years - maximum \$120.00

District matches at 4% - maximum \$50.00

5% - next 8 years - maximum \$180.00

District matches at 4% - maximum \$120.00

6% - thereafter - maximum \$200.00

District matches at 4% - maximum \$120.00

From July 1, 1969, to June 30, 1971

3% - maximum \$225.00

District matches at 2% - maximum \$150.00

B. Chapter 15-39.1

From July 1, 1971, to June 30, 1977

4% - no maximum

District matches at 4% - maximum \$500.00

From July 1, 1977, to June 30, 1979

5% - no maximum

District matches in like amount

From July 1, 1979, to June 30, 1989

6.25% - no maximum

District matches in like amount

From July 1, 1989

6.75% - no maximum

District matches in like amount

Other differences between the provisions of the Teachers' Fund for Retirement and the former Teachers' Insurance and Retirement Fund affect the benefits received by current retirees. For example, under the two plans there is a difference in determining the normal and early retirement dates and in vesting requirements.

Testimony and Committee Considerations

Concerning the provision of level retirement benefits under the Teachers' Fund for Retirement study, the committee received information from representatives of the Teachers' Fund for Retirement, North Dakota Retired Teachers Association, and North Dakota Education Association. Representatives of the North Dakota Retired Teachers Association advocated that the actuarial margins in the Teachers' Fund for Retirement fund be used for funding proposals for leveling retirement benefits in lieu of increasing employee or employer contributions to accomplish this goal.

The committee learned that although benefit enhancements effective July 1, 1989, narrowed the amount of difference in retirement benefits earned per year of service for each Teachers' Fund for Retirement retiree, that difference remains substantial with 2,169, or about 64 percent, of retirees receiving benefits based on less than the average monthly benefit per year of service per person of \$13.38 for the entire group of 3,380. Representatives of Teachers' Fund for Retirement indicated that at least three factors may have contributed to the difference in benefits beginning in 1980. These factors include the introduction of the "final average salary" concept in 1979, the impact of moneys allocated to the state school aid program from the oil extraction tax through Measure No. 6 which was approved in 1980, and an increase in employee and employer contributions from five percent to 6.25 percent in 1979.

The committee learned that other states have experienced similar problems and that it is not unusual for statewide retirement plans to include benefit dif-

ferences in light of retirement plan changes that are made throughout the years. While some attempts have been made by some states to narrow the differences, no major restructuring has occurred because of the costs involved. However, the committee learned that some states have targeted increases to specific groups based on whatever objectives were trying to be accomplished at the time. Since 1983, in North Dakota, approximately one-third of the available actuarial margin has been used to provide benefit increases for retirees while two-thirds of the available margin has been used to provide benefit increases for future retirees. This allocation is roughly in proportion to the size of each group as compared to all Teachers' Fund for Retirement members.

Both the North Dakota Retired Teachers Association and the Teachers' Fund for Retirement surveyed their members concerning the provision of level retirement benefits under the Teachers' Fund for Retirement. Representatives of the North Dakota Retired Teachers Association reported that of 4,100 surveys sent to their members they received 1,647 responses. Of the 1,647 responses received, 1,313 favored leveling adjustments while 313 favored percentage adjustments with 21 undecided. Representatives of the Teachers' Fund for Retirement surveyed 1,748 of their members concerning postretirement benefit increases. Of the total of 1,748, 1,207 favored a level benefit increase while 537 favored a percentage increase. Four respondents did not voice an opinion. Of the respondents in the 1942-1979 group 95.6 percent favored a level benefit increase, 85.6 percent of the respondents in the 1980-1983 group favored a level benefit increase, while 84.4 percent of the respondents in the 1984-1991 group favored a percentage increase.

Proposals Considered

The consulting actuary for the Teachers' Fund for Retirement presented 11 proposals concerning the provision of level retirement benefits under the Teachers' Fund for Retirement study. One proposal prepared by the consulting actuary would increase the average accrual rate to a minimum of \$25.90 per year of service for all pensioners. The actuarial cost impact of this proposal is \$11,341,500 per year or 4.72 percent of covered compensation. The lump sum cost of this proposal is \$127,033,000. The consulting actuary presented five proposals that would provide a monthly benefit increase per year of service. The actuarial cost impact of these proposals is shown in the table below:

**Monthly Benefit Increase Per Year
of Service**

	Year of Retirement			Lump Sum Cost	Increase in Employer Cost (Annual Dollar Amount)	
	1942-79	1980-83	1984-89			
No. 2	\$3.00	\$2.00	\$1.00	\$24,644,200	.92%	(\$2,200,200)
No. 3	2.00	1.50	1.00	17,964,200	.67%	(1,603,800)
No. 4	2.00	1.00	.50	15,197,200	.57%	(1,356,800)
No. 5	1.00	.75	.50	8,982,100	.33%	(801,900)
No. 6	.75	.50	.25	6,161,100	.23%	(550,100)

The consulting actuary also presented three proposals under which a flat dollar benefit increase would be provided to all pensioners. The actuarial cost impact for each of these proposals is shown below.

	Benefit Improvement	Lump Sum Cost	Increase in Employer Cost (Annual Dollar Amount)	
No. 7	\$100/month per pensioner	\$37,455,900	1.39%	(3,344,000)
No. 8	\$75/month per pensioner	28,091,900	1.04%	(2,508,000)
No. 9	\$50/month per pensioner	18,728,000	.70%	(1,672,000)

Finally, the consulting actuary presented two proposals that provide graded flat dollar benefit increases based on year of retirement. The actuarial cost of these proposals is shown below:

Monthly Benefit Increase Based on Year of Retirement						
	Year of Retirement			Lump Sum Cost	Actuarial Cost Impact (Annual Cost)	
	1942-79	1980-83	1984-89			
No. 10	\$100	\$75	\$50	\$31,082,400	1.16%	(2,775,000)
No. 11	75	50	25	21,718,400	.81%	(1,939,000)

Representatives of the North Dakota Retired Teachers Association indicated that the association supports the leveling of benefits accomplished by proposal No. 10 which would provide a \$100 monthly benefit increase based on year of retirement for teachers retiring between 1942 and 1979, \$75 for teachers retiring between 1980 and 1983, and \$50 for teachers retiring between 1984 and 1989. As an al-

ternative, representatives of the association said the association would support proposal No. 2.

Conclusion

The committee makes no recommendation concerning the provision of level retirement benefits under the Teachers' Fund for Retirement study.

TAXATION COMMITTEE

The Taxation Committee was assigned two studies. Senate Concurrent Resolution No. 4065 directed a study of North Dakota's tax system structure, balance, and burden and called for specific attention to corporate tax issues, tax incentives, games of chance taxes, and airport funding. Senate Concurrent Resolution No. 4033 directed a study of property tax exemptions and credits, equalization problems, and the method used to calculate county average agricultural land values for property tax purposes.

Committee members were Representatives John Schneider (Chairman), Wesley R. Belter, Judy L. Demers, Steve Gorman, Jim Haugen, Alvin Hausauer, John Hokana, Lee Kaldor, Alice Olson, Bill Starke, Mike Timm, Steven W. Tomac, Herb Urlacher, and Wade Williams and Senators Jim Dotzenrod, Erwin M. Hanson, Jack Ingstad, Don Moore, Allen Richard, Joseph A. Satrom, and Jens Tennefos.

The report of the committee was submitted to the Legislative Council at the biennial meeting of the Council in November 1990. The report was adopted for submission to the 52nd Legislative Assembly.

TAX SYSTEM STUDY

Background

Within the broad range of topics worthy of attention under the tax system study, the committee chose to focus its attention on the structure, balance, and burden of the tax system. The committee was informed that the interim Judiciary Committee was studying gaming laws and taxes and that the North Dakota Aeronautics Commission was conducting a comprehensive study of airport financing with funding assistance from the Federal Aviation Administration. The committee reviewed existing law on the corporate alternative minimum tax and the unitary tax and tax incentives for economic development but no testimony was offered in support of, or opposition to, existing law in these areas. Because 1989 legislation to increase income, sales, and motor vehicle fuel taxes was the subject of successful referrals during this interim, the committee chose to devote the majority of its time to examining the fairness and balance of North Dakota's tax structure.

The 1989 legislative measures that were referred and defeated would have provided for a 17 percent individual short form income tax rate, a six percent state sales tax rate, and a 20-cent-per-gallon motor vehicle fuel tax rate. The defeat of these measures leaves the state with a 14 percent individual short form income tax rate, a five percent sales tax, and a 17-cent-per-gallon motor vehicle fuel tax. The claims made by opposing sides in the referral process played a significant role in the committee's deliberations during the interim.

Tax Balance and Burden Comparisons

Comparison of North Dakota's tax system with systems of other states is not an exact science. Comparisons are available from numerous sources but comparisons often have different results and use of some comparisons may lead to erroneous conclusions

if the observer is not cautious in examining the methods and objective of the comparison. Among the problems confronted in considering any interstate tax comparison are the following:

1. A comparison is out of date before it is completed. The most recent comparisons available are based on data gathered for fiscal years two or three years ago. The states being compared have often had substantial legislative tax policy changes since the data was compiled. For this reason, comparisons are useful for consideration of the time during which the data was generated but their limitations must be recognized when considering present or future tax policies.
2. A comparison of only tax rates can be very misleading. Tax bases of the states differ in many respects and observing only tax rates ignores the equally important amount against which the rate is applied.
3. The preparer of a comparison of all states' taxes is not intimately familiar with each state's laws, which means that only the obvious features of each state's laws are compared and significant features may be ignored.
4. A tax burden, tax revenue per capita, or tax rate comparison presents only the revenue side of the picture. Revenue needs are driven by expenditure demands and different sources may be used to generate needed revenues. States that provide a lower level of service or rely on local government funding (primarily property taxes) can maintain lower state tax burdens. Geographic, population, and economic factors also play significant roles that are not apparent by simply comparing burdens, revenues, or rates.
5. A per capita tax burden comparison is often based on total tax revenues divided by population. This may be misleading because severance taxes, corporate taxes, and certain other taxes that may be "exported" are not properly attributable to each taxpayer within the state. Composition of the population is ignored and those who pay little or no tax are considered. High per capita income states will also show higher per capita tax burdens simply because of higher incomes.
6. Property taxes and other taxes collected by local governments must be considered. States that provide a lower level of assistance to political subdivisions for education, infrastructure, and other expenses of government are able to maintain lower state tax levels by shifting the tax burden to local governments.

The committee examined tax burden comparisons from more than 30 sources and found that North Dakota ranks from 28th to 40th among the states in tax burden comparisons made on a per capita or income basis when state and local tax revenue is considered. When severance taxes are removed from computations of tax burden, North Dakota ranks

44th among the 50 states in state and local tax burden. From 1970 to 1987 North Dakota's state and local tax revenue per \$100 of personal income of taxpayers has decreased by 19 percent, with a 3.5 percent increase in state tax revenue and a 43.7 percent decrease in local tax revenue. Various comparisons of individual income tax burden per capita consistently rank North Dakota's tax burden among the five lowest of those states that impose individual income taxes.

Comparison of the balance of North Dakota's tax system, meaning the relative reliance on the "big three" tax sources of property tax, sales tax, and income tax, shows that North Dakota generates 28 percent of total revenues from property taxes, 33 percent from sales taxes, and 15 percent from income taxes. National averages indicate that the average state draws 30 percent of its revenues from property taxes, 36 percent from sales taxes, and 25 percent from income taxes. That North Dakota is below the average for all states in each area is attributable to several factors, including the fact that North Dakota receives more revenue from severance taxes than the average state. Comparison of North Dakota's reliance on these three tax sources with national average reliance on these tax sources indicates that North Dakota is fairly well balanced in drawing revenue from the "big three" revenue sources, with the possible exception of the income tax, which is lower than the national average by a larger amount than the property and sales tax receipts.

General conclusions can be drawn from examination of the substantial amount of data comparing tax systems of all states. Once again, it must be emphasized that the data does not include recent changes in North Dakota law nor the changes made in other states. The following conclusions appear to be supported by available data:

1. It appears that the tax burden imposed in North Dakota is well below the average imposed nationwide.
2. It appears that North Dakota has shown an increased reliance on state taxes and a decreased reliance on local property taxes in recent years. This does not reflect a reduced need for revenue among political subdivisions. Rather, it indicates that political subdivisions have shown increased reliance on revenue from the state, which revenue must be gathered through state taxes.
3. It appears that North Dakota personal income has risen at a faster rate than taxes in comparison to other states during the period 1970 to 1987. North Dakota went from a relatively high tax burden state to a relatively low tax burden state during that period.
4. It appears that North Dakota places a fairly well-balanced reliance on the "big three" tax revenue sources—sales, income, and property taxes.

The committee reviewed the results of two studies completed in November 1988 and January 1989 by three professors at North Dakota State University. According to these studies, North Dakota's tax burden is below the national average imposed by states.

In the view of the authors of these studies, the optimum tax system should:

1. Have low administrative costs.
2. Provide reliable revenue.
3. Accomplish policy objectives without distorting other private sector decisions.
4. Be imposed on the basis of citizens' ability to pay or the benefits received by the taxpayers.
5. Be understandable to taxpayers.
6. Be easy for taxpayers to comply with.
7. Minimize shifting of the tax burden.

These studies indicate that North Dakota's state and local tax system is generally balanced and somewhat regressive. A tax system is considered "regressive" when a disproportionate share of the tax burden falls on lower income taxpayers. The studies state that high per capita income counties generally receive less per capita benefits than low income counties, which suggests that the state government is redistributing tax revenues. The studies state that the overall impression is that North Dakota's tax system is fair across economic sectors and on a geographic basis.

The committee requested the State Tax Department to prepare detailed comparisons of state and local tax burden in North Dakota and surrounding states, based upon more recent data than is used in nationwide studies. The information presented to the committee compared the tax burden of residents of North Dakota, South Dakota, Montana, Minnesota, Iowa, and Wisconsin at various annual income levels. The comparison was prepared before the December 1989 referral election and used a 17 percent income tax rate, six percent sales tax rate, and 20-cent-per-gallon motor vehicle fuel tax rate for North Dakota. Although these rates are higher than rates after the referral election, the comparison indicates that total state and local tax burden for a married couple with two children appears to be lower in North Dakota than in any of the other states compared.

Alcohol and Tobacco Taxes

The committee compared wholesale and retail taxes imposed on alcoholic beverages in North Dakota and six surrounding states. At the wholesale level, North Dakota alcoholic beverage taxes appear to be approximately in the middle of the range of taxes imposed by the seven states compared. At the retail level, North Dakota's seven percent state sales tax rate and additional local sales taxes of up to one percent make North Dakota's sales tax rate the second highest of the seven states compared. For tobacco taxes, North Dakota ranks third highest of the seven states compared, at both the wholesale and retail levels.

Sales Tax Exemptions

In its study of the state sales tax, the committee requested the Tax Department to prepare detailed fiscal estimates of the loss of revenue to the state from the existence of each sales tax exemption. Expressed as the midpoint of the estimated range for each exemption on a biennial basis, the major revenue losses are for exemptions for sales of gasoline - \$50.5 million; coal - \$26.5 million; electricity - \$36.5 million;

water - \$1.6 million; newspapers - \$2.4 million; magazine subscriptions - \$1.2 million; prescription drugs - \$8 million; sales to hospitals and nursing homes - \$5.25 million; agricultural fertilizer - \$9.78 million; livestock and poultry feed - \$9 million; agricultural seed - \$6.8 million; agricultural chemicals - \$9.35 million; grocery foods - \$60 million; sales to residents of Montana and Canada - \$1.45 million; interstate telephone calls - \$4.2 million; cable television services - \$3 million; sales at auction - \$3.5 million; and various exempt services - \$130.35 million. In addition, biennial revenue lost from the reduced sales tax rate at the midpoint of the range for farm machinery and repair parts is \$8 million and for qualifying manufacturing equipment is \$2.75 million. Based on the estimates, if all exemptions and sales tax rate reductions were eliminated and sales and use tax rates were five percent, from \$334 million to \$434 million in additional revenue would be generated each biennium. This amount is nearly equal to current sales tax revenues, which indicates that approximately half of all sales in the state are tax exempt. Or, stated differently, the sales tax rate could be cut in half and produce approximately the same amount of revenue if all sales tax exemptions were eliminated.

Federal Fuels Tax Allocations

Federal highway tax revenue allocations are of concern because changes in the federal program may translate into higher state taxes on fuels. The federal highway program legislation expires in 1991. Under the federal highway program, the state receives \$4 in federal allocations for each \$1 in matching state funds. Congress is considering proposals, including proposals supported by organizations of highway officials, to revise formulas so as to take approximately \$30 million per year in federal funding away from North Dakota. These proposals would change the emphasis of the highway program to concentrate more resources on urban congestion and would have shifted funding away from rural states such as North Dakota. These proposals, if enacted by Congress, would reduce North Dakota's allocations to the extent that North Dakota would have to increase motor vehicle fuels taxes by 10 cents per gallon to maintain the existing level of funding available to the Department of Transportation for highway purposes. The commissioner of the Department of Transportation was concerned with these proposals and organized a coalition of rural states which has been successful in getting national organizations to support a "hold harmless" position on pending federal legislation and an equitable growth rate policy, which should combine to guarantee that no state would receive less allocation under new legislation than was received under existing law and allow all states to share in future growth in allocations. These issues are of direct consequence to North Dakota's motor vehicle fuels tax rate. Any federal legislation on the highway program would probably be enacted after the close of the 1991 North Dakota Legislative Assembly.

Coal Taxes

The committee examined the status of the coal industry in North Dakota. In 1987 the state

severance tax on coal was reduced by 27 cents per ton. When combined with 23-cent-per-ton reclamation cost reductions and 60-cent-per-ton operator cost reductions, the costs of producing coal have decreased by \$1.10 per ton. The North Dakota lignite industry increased production substantially in 1988 and 1989. According to the North Dakota Lignite Council, this increased production has generated an increase in severance, conversion, sales and use, and individual and corporate income taxes of over \$11 million per year from 1987 to 1989. The Lignite Council informed the committee that the Clean Air Act under consideration by Congress is the biggest problem the North Dakota lignite industry has faced in 15 years. A Lignite Council representative said a direct result of the enactment of the Clean Air Act will probably be the closing of at least one coal mine in North Dakota and the Act will add costs and reduce production in North Dakota.

County Auditors' Concerns

The committee received a request from the County Auditors Association to review and improve existing law governing county auditors' statutory duties and perceived problems regarding sale of property for delinquent property taxes. The committee reviewed existing law in this area and considered a bill draft to address these areas of concern. The committee considered this bill draft at its final meeting, made suggestions for revisions, and was informed by interested parties that further review of the bill draft was needed. Rather than holding another meeting to consider only this bill draft, the committee recommended to the County Auditors Association that it continue working on the bill draft and secure separate legislative sponsorship for the bill.

Conclusion

The committee makes no recommendation for changes in North Dakota's tax structure. The committee viewed its role as being to gather the best information available to assess the state's status in comparison with other states and within this state. In light of the referral defeat of 1989 tax increase legislation, the committee recognized that this expression of the voters' will would make it impractical to undertake any significant change in North Dakota's tax structure at this time to enhance revenues and the state's financial condition immediately after the referral election made it impractical to recommend any tax reductions.

PROPERTY TAX STUDY

Background

As a result of a 1979 decision of the North Dakota Supreme Court, the 1981 Legislative Assembly extensively reshaped North Dakota's property tax assessment procedures. The 1981 legislation established four statutory classifications of real property—residential, agricultural, commercial, and centrally assessed property. Of the four real property classifications, only agricultural property is to be valued according to its productivity value. The other three classifications of property are to be valued for assessment purposes on the basis of their market value, including all "matters that affect the actual

value of the property” as provided in North Dakota Century Code (NDCC) Section 57-02-01. The present valuation system for agricultural property is based on the capitalized landlord’s share of agricultural production in each county.

The present formula for valuation of agricultural property is contained in NDCC Section 57-02-27.2. That section provides that “true and full value” of agricultural lands is “agricultural value,” which is in turn defined as “capitalized average annual gross return.” “Annual gross return” is to be determined from crop share or cash rent information for rented lands, 30 percent of annual gross income from cropland used for growing crops other than sugar beets or potatoes, 20 percent of annual gross income for cropland used for growing sugar beets or potatoes, and 25 percent of gross income potential based upon animal unit carrying capacity of the land for land used for grazing animals. “Average annual gross return” for each county is to be determined by totaling annual gross returns for the most recent six years for which data is available and discarding the highest and lowest annual gross returns and dividing the resulting total by 4. The “capitalized average annual gross return” is determined by use of a capitalization rate that is a 10-year average of the gross Federal Land Bank mortgage rate of interest for North Dakota.

The Agricultural Economics Department of North Dakota State University is assigned the duty of computing annual estimates of average agricultural value per acre on a statewide and countywide basis for cropland and noncropland and is to provide the information to the State Tax Commissioner by December 1 of each year. The Tax Commissioner is required to provide these estimates to the county director of tax equalization for each county before January 1 of each year. Before February 1 of each year, the county director of tax equalization is to provide all assessors in the county with an estimate of the average agricultural value of agricultural lands within each assessment district, based upon the average agricultural value for the county adjusted by the relative values of lands within each assessment district. Whenever possible, the county director of tax equalization is to use soil type and soil classification data from soil surveys to establish values for assessment districts. Each local assessor is then required to determine the relative value of each assessment parcel in reference to the estimates.

The study directive was prompted by complaints from residents of Bottineau and Renville counties. Residents of those counties cited their concerns with the fact that adjacent parcels of agricultural property on different sides of the county line had substantially different assessed valuations. The same situation occurs along boundaries of other counties in the state and, to a lesser degree, along township boundaries within a county.

Findings

The committee found that the differences in valuation of similar properties on opposing sides of a county or township boundary are inherent in the formula for agricultural valuation. The formula was established with several goals in mind, one of which was

to maintain some stability in the assessment of agricultural land in the face of a volatile agricultural land market. Productivity valuation of agricultural land has achieved relative stability in agricultural land assessments on a statewide basis. While the statewide average market price of farmland fluctuated from \$205 per acre in 1974 to \$454 per acre in 1981 and back down to \$262 per acre in 1987, the statewide average assessed value for taxation purposes stayed within a range of \$186 per acre to \$231 per acre.

The present agricultural valuation model does not permit intercounty equalization at the individual soil mapping unit level. The North Dakota State University model is a “top down model” of calculating a countywide weighted average value per acre for agricultural cropland and grazing and pasture land. This means that agricultural statistics are gathered at the county level and average values per acre are calculated for a countywide average. The resulting averages are then “forced down” through the township level to each individual parcel of property, to fit the countywide average. As a result the same soil in an adjoining county will very likely not have the same value per acre. A study by the State Supervisor of Assessments of the Bottineau and Renville County line valuation variances shows that the difference in valuation between the counties for the same soil has been as much as \$62 per acre in 1987. Several causes contribute to observed differences in valuation of the same soil from one county to another, including the following:

1. Published productivity ratings differ from one county to another for the same soil mapping unit.
2. Soil classifications and modifiers are not uniformly used by all counties.
3. Productivity ratings have been revised since the publication of the detailed soil survey.
4. The ratio of acres of cropland to noncropland in the North Dakota State University model does not match the ratio apparent in the detailed soil survey. The difference in the ratios is not consistent among counties. The university model uses a weighted average of cropland and noncropland values to arrive at the county average value per acre. If the ratios of taxable acres of cropland to noncropland are different from the ratios used in the university model, the values per acre most likely will differ for the same soil as it crosses the county line.
5. The sum of cropland and noncropland acres used in the North Dakota State University model does not equal the total number of taxable acres in a county. The university model does not take into account agricultural land used for other purposes such as shelterbelts, farmsteads, roads, wasteland, forests, wooded land not used for pasture, and gravel pits, among others.

The only data available at the time the model was created was gathered at the county level and use of county level data could not ever develop uniform or consistent agricultural values at the township, school district, ownership, or soil survey levels. The data used in the model also does not account for all sig-

nificant factors. Available data does not include sufficient information on land not used for growing crops. Another deficiency of the model is that it does not reflect the true flow of agricultural incomes. Crop-related income streams not reflected in the model come from crop insurance and conservation reserve payments. Another identified deficiency of the current model is that there is an irreconcilable difference between acreages used in the model and those actually used each year by agricultural operators.

Recommendations to the Committee

A member of the North Dakota State University faculty told the committee it appears that it is now possible to create a "bottom-up" model that offers greater equity at the soils level to provide greater equity at the landowner level which can then be worked up through the township and school district levels to the county level. This approach should be possible because detailed soil survey data is now available for the state and use of this data to begin valuations at the soils level should eliminate many of the inconsistencies and valuation differences that exist under the current model. The new model could be constructed to account for differences in market value of the same soil types in different parts of the state, to measure income streams from sources such as crop insurance and conservation reserve payments, to account for lands that do not produce crops, and to account more accurately for the proper landowner's share for particular crops. The difficulty with instituting a new formula at this time is that soils maps and computerizing the data will not be completed until 1994, and it is expected that the new formula would not be available for operation until November 1995.

The State Supervisor of Assessments told the committee that there is little that can be done legislatively to correct differences in assessment across county lines under the current agricultural property assessment formula. The Supervisor of Assessments and

his staff have worked with officials in affected counties and have narrowed the differences in valuations in those areas, but greater equality cannot be achieved without restructuring the model.

Lakeshore Property Assessments

The committee requested comparison of market value to assessed value for lakeshore property. The State Supervisor of Assessments applied sales ratio study data against assessed valuation for lakeshore residences and the comparison indicates that lakeshore property is being assessed at a significantly lower portion of its actual assessed valuation than are other types of property. On a statewide basis, lakeshore property is being assessed at about 65 percent of actual market value.

Tax-exempt Property

The committee reviewed available information on the amount of property in the state that is exempt from taxes. The State Supervisor of Assessments told the committee that there appears to be a lack of information on assessed values for tax-exempt property because tax assessors choose to devote their limited time to assessing property that is subject to property taxes rather than spending time on assessing property that is exempt. From the information that is available, it appears that up to 20 percent or more of the value of all property in some cities is exempt from property taxes.

Conclusion

The committee makes no recommendations for changes in assessment of agricultural property, seasonal or recreational property, or tax-exempt property. It appears that changes to the valuation formula for agricultural property will be required, but information needed to restructure the formula will not be available until the 1995 legislative session.

STUDY RESOLUTIONS AND ASSIGNMENTS FOR THE 1989-90 INTERIM

The following table identifies the bills and resolutions prioritized for study during the 1989-90 interim under authority of North Dakota Century Code (NDCC) Section 54-35-03. The table also identifies statutory and other responsibilities assigned to interim committees and identifies the interim committee assigned the study or responsibility.

Bill or Resolution No.	Subject Matter	Bill or Resolution No.	Subject Matter
1001	Study the budgetary impact on the state and counties, and the fiscal effect on providers, of providing companionship services, family home care, and personal care services, and feasibility and desirability of providing exemptions from minimum wage and hour standards that may be prescribed under Chapter 34-06 for persons who provide companionship services, family home care, and personal care services (Budget Committee on Long-Term Care)	2538	Study the appropriations process, including consideration of recommendations for appropriate reference in appropriations bills to programs, departments, agencies, institutions, and activities (Budget Section)
1002	Study education finance issues including the issues of adequate funding for school districts, inequities in the distribution of transportation aid to schools, local effort in support of schools, and other funding sources including federal programs and energy taxes revenue, and review the operation and effect of any laws passed during the 1989 legislative session affecting the county superintendents of schools, ending balances of school districts, reorganization of school districts, educational telecommunications, testing, and nonaccreditation of schools (Education Finance Committee)	3001	Review and develop recommendations regarding the expansion of community services for the chronically mentally ill and chemically dependent and the future role of the State Hospital (Budget Committee on Human Services)
2030	Study the feasibility and desirability of various options relating to the consolidation of various organizational and investment functions of the Public Employees Retirement System, Teachers' Fund for Retirement, and State Investment Board (Retirement Committee)	3004	Study methods and coordinate efforts to initiate and sustain state economic development and to stimulate the creation of new employment opportunities for the citizens of North Dakota (Jobs Development Commission)
2476	Consider all aspects of the election process with emphasis on new voting concepts that would make the process more timely and cost effective, accept the proposals of one or two counties or reject all proposals, and adopt guidelines a county must use in preparing a proposal for a mail ballot election (Elections Committee)	3009	Study the methodology for considering property costs in setting rates for nursing home care in North Dakota (Budget Committee on Long-Term Care)
		3027	Study the legislative process with emphasis on the appropriate use of the 80 natural days allowed for the Legislative Assembly to be in session (Legislative Management Committee)
		3033	Study and evaluate the adequacy of compensation to justices of the Supreme Court and judges of the district courts, legislators, and other elected state officials (Budget Committee on Government Administration)
		3035	Study the primary election process (Elections Committee)
		3049	Study the feasibility and desirability of consolidating the various agricultural loan programs administered by the Bank of North Dakota (Budget Committee on Government Finance)
		3053	Study the problems associated with the grading and purchasing of barley for malting purposes (Agriculture Committee)
		3057	Study the laws relating to state and local filing of liens, security interests, financing statements, and continuation statements relating to farm products (Agriculture Committee)

Bill or Resolution No.	Subject Matter
3058	Study the uses to which the proceeds of charitable gaming are devoted and the laws governing charitable gaming (Judiciary Committee)
3059	Study the health care insurance needs of uninsured and underinsured persons (Industry and Business Committee)
3060	Study the feasibility and desirability of providing level retirement benefits to all retirees under the Teachers' Fund for Retirement (Retirement Committee)
3062	Study the payment of occupational or professional licensing fees by state agencies and institutions (Budget Committee on Government Administration)
3073	Study the feasibility and desirability of establishing a prescription drug reporting center (Industry and Business Committee)
3076	Study motorboat license fees and the use and allocation of game and fish operating fund's interest income (Game and Fish Committee)
3081	Study legislative employee compensation (Legislative Management Committee)
3083	Study the adequacy of property insurance coverage to replace state buildings (Budget Committee on Government Administration)
3085	Study the price level the State Forester should establish for seeds and planting stock from the state nursery (Budget Committee on Government Finance)
3086	Study charitable gaming laws and rules and the need to establish a permanent legislative overview committee for charitable gaming issues (Judiciary Committee)
4001	Study in lieu of property tax payments to school districts; school district revenues derived from oil, gas, and coal taxes; and other payments to school districts other than from the state to determine whether to include these funds as local resources when measuring school district contributions to the foundation program (Education Finance Committee)
4002	Study the use of various factors in addition to property wealth which could be used in the education finance formula to equalize educational opportunities for students (Education Finance Committee)

Bill or Resolution No.	Subject Matter
4004	Study the state's game and fish laws and rules (Game and Fish Committee)
4006	Study issues and the feasibility of various options relating to the provision of adequate and affordable health insurance coverage for retired members of the Teachers' Fund for Retirement and the judges' retirement program, and for other retired state employees and officials not participating in the Public Employees Retirement System or the Highway Patrolmen's Retirement System (Retirement Committee)
4014	Study the governmental and societal impact of the incidence and cost of organ and tissue transplants, and the appropriate statutory and regulatory policy to address those impacts (Budget Committee on Human Services)
4025	Study the state of the law with respect to legislative apportionment (Legislative Management Committee)
4030	Study child care issues and needs, including the feasibility and cost of providing child care support to low income working families (Budget Committee on Human Services)
4033	Study equalization problems in valuing property for property tax assessment, property tax exemptions and credits, and the methods used to calculate county average agricultural land values for ad valorem taxation (Taxation Committee)
4034	Study the administration of building and mechanical code enforcement at the state and local level (Political Subdivisions Committee)
4035	Study the purposes, powers, management, and operations of the Bank of North Dakota (Budget Committee on Government Finance)
4036	Study the feasibility of establishing an unused pesticide and pesticide container disposal program (Agriculture Committee)
4041	Study the delivery of in-home and community-based services and explore methods by which such services can be made more affordable (Budget Committee on Long-Term Care)

Bill or Resolution No.	Subject Matter	Bill or Resolution No.	Subject Matter
4047	Study the state's system of delivering various human services in light of recently enacted federal welfare reform legislation to determine the most efficient, effective, and responsible method of delivering public assistance to low income families and individuals, and study the financial and other impacts on the state of implementing recently enacted federal Medicare catastrophic coverage legislation (Budget Committee on Long-Term Care)	4073	Monitor the Department of Human Services' service payments to the elderly and the disabled and long-term care programs during the 1989-91 biennium (Budget Committee on Long-Term Care)
		NDCC Citation	Subject Matter (Committee)
4053	Study the feasibility and desirability of providing incentives to North Dakota graduates to remain in this state after graduation and of increasing tuition at the institutions of higher education and providing low interest loans to students to cover the cost of increased tuition (Budget committee on Government Finance)	4-02.1-18	Receive annual audit report from State Fair Association (Legislative Audit and Fiscal Review Committee)
4056	Study the state's bountiful natural resources and outdoor recreation activities with an emphasis on the state's wildlife resources and enhancement of these resources for the benefit of North Dakota citizens and economic development (Jobs Development Commission)	10-23-03.2	Receive annual audit report from corporation receiving ethyl alcohol or methanol production subsidy (Legislative Audit and Fiscal Review Committee)
4058	Study the problems associated with solid waste management (Political Subdivisions Committee)	15-10-12.1	Approve any gift of a higher education facility (Budget Section)
4060	Study the methods in which the state acquires and holds real property, the effect of such acquisition on local tax bases, the feasibility of simplifying laws for acquisition and holding of real property by the state, and the feasibility of requiring divestiture of certain real property owned by the state (Political Subdivisions Committee)	15-10-14.2	Meet with the State Board of Higher Education to discuss priority issues regarding the future of the state's higher education system and to receive seven-year plan for the state's higher education system (Higher Education System Review Committee)
4065	Study the balance between the various tax systems in North Dakota, policies and issues of taxing gaming in North Dakota, and policies, planning, and funding of local and regional airports in North Dakota (Taxation Committee)	15-10-18	Approve nonresident student tuition fees (Budget Section)
4066	Study the economic and social impact to North Dakota political subdivisions, agriculture, and businesses resulting from the increasing number of acres of land acquired by the federal and state governments (Political Subdivisions Committee)	15-59-05.2	Receive reports on interagency agreements for education services to handicapped students (Education Finance Committee)
		21-11-05	Receive any application for a natural resource bond loan (Budget Section)
		25-04-17	Receive report on writeoff of patients' accounts at Grafton State School (Legislative Audit and Fiscal Review Committee)
		28-32-02	Approve extension of time for administrative agencies to adopt rules (Administrative Rules Committee)
		28-32-02	Establish procedure to distribute copies of administrative agency filings of notice of proposed rulemaking (Administrative Rules Committee)
		38-14-.1-04.2	Receive annual reports of Reclamation Research Advisory Committee (Agriculture Committee)
		50-06-05.1	Approve termination of federal food stamp or energy assistance program (Budget Section)

NDCC Citation	Subject Matter (Committee)
50-06.3-08	Receive annual report from Department of Human Services on writeoff of recipients' or patients' accounts (Legislative Audit and Fiscal Review Committee)
54-10-01	Determine frequency of audits for state agencies (Legislative Audit and Fiscal Review Committee)
54-14-01.1	Periodically review actions of the Office of the Budget (Budget Section)
54-14-03.1	Receive reports on fiscal irregularities (Budget Section)
54-16-01	Approve excess transfers from state contingency fund (Budget Section)
54-27-22	Approve use of capital improvements planning revolving fund (Budget Section)
54-27-23	Approve use of cash flow financing (Budget Section)
54-35-02	Review uniform laws recommended by Commission on Uniform State Laws (Judiciary Committee)
54-35-02	Establish guidelines for use of legislative chambers and displays in Memorial Hall (Legislative Management Committee)
54-35-02.2	Study and review audit reports submitted by the State Auditor (Legislative Audit and Fiscal Review Committee)
54-35-02.4	Review legislative measures and proposals affecting public employees retirement programs (Retirement Committee)
54-35-02.6	Study and review rules of administrative agencies (Administrative Rules Committee)
54-35-02.7	Overview the Garrison Diversion Project and related matters (Garrison Diversion Overview Committee)
54-35-11	Make arrangements for 1991 session (Legislative Management Committee)
54-44.1-07	Prescribe form of budget data information prepared by the director of the budget (Budget Section)
54-44.1-13.1	Approve reduction of budgets due to initiative or referendum action (Budget Section)
54-44.4-04	Approve state purchasing rules (Administrative Rules Committee)
54-52-06	Receive report on state retirement fund's actuarial soundness (Budget Committee on Government Finance)
54-52.1-04.3	Receive report on contingency reserve fund for state health self-insurance plan (Budget Committee on Government Finance)

NDCC Citation	Subject Matter (Committee)
57-01-11.1	Receive quarterly reports on auditing enhancement program and settlement of tax assessments (Budget Section)
1985 Session	
Laws Citation	Subject Matter (Committee)
Chapter 77	Administer legislative wing improvements appropriation (Legislative Management Committee)
1987 Session	
Laws Citation	Subject Matter (Committee)
Chapter 5	Receive Land Reclamation Research Center 1989 report (Agriculture Committee)
Chapter 29	Administer legislative wing improvements appropriation (Legislative Management Committee)
Chapter 49	Approve vacation of National Guard armories (Budget Section)
Chapter 52	Approve transfer of title or use of San Haven (Budget Section)
1989 Session	
Laws Citation	Subject Matter (Committee)
Chapter 1	Receive report on deficiency appropriation to state bonding fund (Budget Section)
Chapter 3	Approve reduction of certain budgets due to negative ending balance forecast (Budget Section)
Chapter 10	Approve vacation of National Guard armories (Budget Section)
Chapter 25	Administer legislative wing and Capitol grounds improvements appropriation (Legislative Management Committee)
Chapter 63	Approve expansion of Oxford House (Budget Section)
Chapter 81	Approve expenditure of income of Agricultural Products Utilization Commission (Budget Section)
Chapter 218	Receive reports on restructuring of school district boundaries and number of interim school districts (Education Finance Committee)
Chapter 818	Hold legislative hearings on block grants (Budget Section)

Added Committee Responsibilities

This portion of the table identifies additional assignments by the Legislative Council or the Legislative Council chairman to interim committees by listing the subject matter and the interim committee to which it was referred.

Responsibility	Interim Committee	Bill or Resolution No.	Subject Matter
Receive information on the effect of diking on the Red River and the resulting damage caused by the 1989 flood	Agriculture	3006	Study the feasibility and desirability of consolidating various organizational and investment functions of the Public Employees Retirement System, Teachers' Fund for Retirement, and State Investment Board (see SB 2030)
Study and evaluate the adequacy of compensation to judges of the county courts	Budget Committee on Government Administration		
Monitor status of state agency and institution appropriations	Budget Committee on Government Finance		
Receive reports on actuarial soundness of Teachers' Fund for Retirement and Highway Patrolmen's Retirement System	Budget Committee on Government Finance	3020	Study the interbasin transfer of biota, waterfowl diseases, waterfowl wastes, and the possibility of moving Missouri River water to the James, Sheyenne, Souris, and Red Rivers
Review plans to expand the state's partnership with private mental health providers	Budget Committee on Human Services	3023	Study the feasibility and desirability of developing a comprehensive, statewide delivery system for adult vocational and technical education and industrial training
Receive progress report on state's compliance with court orders in the deinstitutionalization lawsuit brought by the Association for Retarded Citizens	Budget Section	3032	Study the feasibility and desirability of providing a county option for state funding of the clerk of district court
Review and report on budget data prepared by the director of the budget	Budget Section	3037	Study the role of agricultural education in the public schools in this state
Receive reports on pilot projects that integrate handicapped children into regular education classrooms	Education Finance	3043	Study the North Dakota Atmospheric Resource Management Program
Statutory and constitutional revision	Judiciary	3048	Study the feasibility and desirability of requiring boiler operators to be licensed
Monitor fine revenues to the common schools trust fund	Legislative Audit and Fiscal Review	3050	Study the fees charged by agencies, boards, commissions, departments, and other instrumentalities of the state and its political subdivisions
Review legislative Rules	Legislative Management	3052	Study the feasibility and desirability of periodically and systematically reviewing all statutorily created boards, commissions, committees, and councils to determine the necessity of those bodies
Provide Census Bureau with legislative apportionment information requirements for 1990 census tracts	Legislative Management	3055	Study the feasibility and desirability of the state contracting with a fiscal intermediary for administration of the Medicaid program
Review constitutional requirements governing amendments to bills	Legislative Management	3063	Study the cost effectiveness of maintaining a central management system for state motor vehicles

STUDY RESOLUTIONS NOT PRIORITIZED

The following table lists the resolutions not prioritized for study during the 1989-90 interim under authority of NDCC Section 54-35-03. The subject matter of many of these resolutions is the same or similar to the subject matter of resolutions that were given priority or of study assignments to specific committees.

Bill or Resolution No.	Subject Matter
3003	Study the budgeting, auditing, and management of the reimbursement system for the Department of Human Services' developmental disabilities program; study the budgeting, auditing, and management of the existing reimbursement system for private providers of mental health services; and review plans to expand the state's partnership with private mental health providers
3064	Study the advantages and disadvantages of deregulating telecommunications
3065	Study the cost and utilization of office space and other facilities leased by state agencies and institutions
3066	In cooperation with the members of the North Dakota Congressional Delegation, study the adverse economic impact that changing conditions in marketing, processing, and retailing of agricultural products are having on producers of agricultural products and consumers

Bill or Resolution No.	Subject Matter	Bill or Resolution No.	Subject Matter
3067	Study whether the Commissioner of Insurance should employ a property and casualty actuary	4039	Study the operation and effect of North Dakota's no-fault insurance law in comparison with no-fault insurance laws in other states
3068	Study the nature, scope, and effect of efforts to prohibit the illicit diversion or use of controlled substances in this state	4042	Study the structure, organization, and administration of the Workers Compensation Bureau and the qualifications of the Workers Compensation Bureau claims analysts and rehabilitation staff
3069	Study the feasibility and desirability of adopting an alternative method of delivery of special education and related services to developmentally disabled students in this state	4049	Study mandates causing increased local government expenditures or decreased local government revenues
3070	Study the operation and effect of the state's open bottle law	4050	Study methods for funding law enforcement training facilities and programs
3071	Study the adequacy and enforcement of motor vehicle dealer licensing laws	4052	Study methods of ensuring that all operators of motor vehicles maintain automobile liability insurance
3074	Study Type I wetlands	4054	Study the feasibility and desirability of regulating the use of pesticides near apiaries
3078	Study economic development efforts in this state (see HCR 3004)	4055	Study the ethical, social, economic, and legal implications of various medical, bioethical, and health issues
3088	Study the feasibility and desirability of entering into reciprocal agreements with Indian tribes concerning the registration of motor vehicles, and the impact upon state funding provided to its political subdivisions as a result of an Indian tribe's exercise of its sovereign powers	4057	Study the appropriateness of allowing the use of advisory insurance rates to be filed for insurance companies by licensed rating organizations
3089	Study the feasibility and desirability of regulating dial-a-porn telephone services	4059	Study the feasibility of moving Missouri River water to the James, Sheyenne, Souris, and Red Rivers
4016	Study the present trends of social service program funding and the equitable distribution of costs for such programs	4063	Study the legal status and policies for use of the receipts, disbursements, and transfers of motor vehicle license, registration, and fuels tax revenues
4026	Study the feasibility of appointing county officials who are elected under existing law in counties of relatively small population	4067	Study the feasibility and desirability of authorizing tribal courts to order involuntary commitments to state-operated facilities in accordance with the state's mental health commitment laws
4028	Study the feasibility and desirability of regulating salvage pool operations and the activities of insurance companies disposing of vehicles through such operations	4069	Study state employee compensation levels and practices

1991 NORTH DAKOTA LEGISLATIVE COUNCIL BILL AND RESOLUTION SUMMARIES

HOUSE

House Bill No. 1024 - Administrative Agency Rule Definition. This bill amends the definition of rule with respect to state administrative agencies to replace the existing exemptions for interpretative statements, general statements of policy, and guidelines with an exemption for any material, including a guideline, interpretative statement, statement of general policy, manual, brochure, or pamphlet, that is merely explanatory and not intended to have the force and effect of law. (Administrative Rules Committee)

House Bill No. 1025 - Administrative Agency Rulemaking Notice. This bill provides that 30 days must elapse between the date the Legislative Council mails copies of a state administrative agency's proposed rulemaking notice and the end of the period in which written or oral data, views, or arguments concerning the rulemaking will be received. (Administrative Rules Committee)

House Bill No. 1026 - County Social Service Employee Salary Increases Under State Merit System. This bill delays salary increases for county social service employees covered under the State Merit System of personnel administration from July 1 after the close of a legislative session until the following January 1. (Advisory Commission on Intergovernmental Relations)

House Bill No. 1027 - Optional Property Tax Levy Increase Authority of Political Subdivisions. This bill allows political subdivisions to levy five percent more in dollars in a budget year than was levied in the base year, which is defined as the taxing district's taxable year with the highest amount levied in dollars in property taxes of the three taxable years immediately preceding the budget year. (Advisory Commission on Intergovernmental Relations)

House Bill No. 1028 - Replacement Cost Coverage on State-Owned Property. This bill requires that state-owned property constructed after 1939 be insured for replacement cost according to the underwriting guidelines of the state fire and tornado fund. The bill further requires that the Insurance Department conduct appraisals on state-owned property every six years and that the appraisal amount be adjusted annually in accordance with fire and tornado fund directives. (Budget Committee on Government Administration)

House Bill No. 1029 - Business Interruption Coverage. This bill gives the state fire and tornado fund the authority to offer business interruption insurance to provide coverage for loss of income or additional expenses incurred because of a property loss. (Budget Committee on Government Administration)

House Bill No. 1030 - State Forester Reserve Account. This bill provides for a State Forester reserve account to be used within limits of legislative appropriation by the State Forester, subject to the Legislative Council's Budget Section approval, for

expenses relating to nursery seed losses or other unanticipated events. (Budget Committee on Government Finance)

House Bill No. 1031 - Nursing Home Property Cost Reimbursement. This bill changes nursing home property cost reimbursement for rate years beginning on or after January 1, 1991, by requiring interest and depreciation to be reimbursed based on a facility's actual costs with the property basis limited to the lowest of purchase price, current reproduction costs, or fair market value. (Budget Committee on Long-Term Care)

House Bill No. 1032 - Political Subdivisions Mail Ballot Elections. This bill authorizes a political subdivision to conduct an election by mail ballot if the election is not held in conjunction with a statewide election. (Elections Committee)

House Bill No. 1033 - Mail Ballot Primary Elections. This bill authorizes the board of county commissioners of a county to conduct a primary election by mail ballot. (Elections Committee)

House Bill No. 1034 - Penalty for Being on Property and Hunting on Posted Land. This bill provides that a person who is convicted of a Class B misdemeanor for trespassing is guilty of a Class A misdemeanor for the second or subsequent offense within a two-year period. If the person is convicted of hunting on posted land or trapping on private land without the permission of the owner then that person's hunting, fishing, and trapping privileges would be suspended for a period of one year for the first conviction, two years for the second conviction, and three years for the third or subsequent conviction. (Game and Fish Committee)

House Bill No. 1035 - Combination Game and Fish Licenses. This bill enables the Game and Fish Commissioner to establish combination game and fish licenses. (Game and Fish Committee)

House Bill No. 1036 - Guides and Outfitters Licenses. This bill allows guides and outfitters to purchase licenses to enable them to provide residents or nonresidents, for compensation, big game guiding and outfitting services and one antlered white-tailed deer license or one male antelope license, or both. (Game and Fish Committee)

House Bill No. 1037 - Combination Nonresident Big Game Bow License and Nonresident Wild Turkey Bow Permit. This bill enables the Game and Fish Commissioner to establish a combination license consisting of a nonresident big game bow license and a nonresident wild turkey bow permit. (Game and Fish Committee)

House Bill No. 1038 - Gratis Landowner Hunting License Requirements. This bill requires that an individual seeking to obtain a gratis landowner hunting license be either a person who leases land for agricultural purposes and who actively farms or ranches that land or a landowner. (Game and Fish Committee)

House Bill No. 1039 - Motorboat Titling. This bill requires a certificate of title for every motorboat. (Game and Fish Committee)

House Bill No. 1040 - Use of Motorboat Fuel Tax Moneys. This bill requires the State Treasurer to transfer annually from the highway tax distribution fund, before allocation of the fund, to the game and fish fund an amount equal to the tax collected on 70 gallons of motor fuel multiplied by the number of registered motorboats. (Game and Fish Committee)

House Bill No. 1041 - Spotting Big Game. This bill prohibits the spotting or ascertaining of the location of bighorn sheep, moose, or elk from aircraft for the purpose of hunting or taking or for the purpose of guiding another person in the hunting or taking of that game. (Game and Fish Committee)

House Bill No. 1042 - Basic Health Insurance Coverage. This bill allows the offering of a basic health insurance coverage plan, free of certain mandated coverages, to individuals and employers with fewer than 25 employees who have been without health insurance coverage for at least 12 months preceding the date of application for the coverage. The Commissioner of Insurance is required to assemble data related to the coverage provided under this bill and submit periodic reports to the Legislative Council regarding utilization of the coverage. (Industry and Business Committee)

House Bill No. 1043 - Proposals Mandating Health Insurance Coverages - Review. This bill prohibits the introduction of legislation or the consideration of amendments mandating health insurance coverages or various other components of health insurance plans unless the proposal is accompanied by a report prepared by the Commissioner of Insurance which assesses the impact of the proposal. This bill appropriates \$40,000 to the commissioner for the purpose of implementing the report requirement. (Industry and Business Committee)

House Bill No. 1044 - State Tourism Policy. This bill adopts a state tourism policy to guide the growth of the state's tourism sector. (Jobs Development Commission)

House Bill No. 1045 - Bed and Breakfast Facilities. This bill revises the definition of a bed and breakfast facility to allow four bedroom units and places limitations on the county and city government's authority to impose stricter health and safety, licensure, and inspection requirements on bed and breakfast facilities. (Jobs Development Commission)

House Bill No. 1046 - Sunday Opening. This bill repeals state law relating to the conduct of business on Sunday and provides for one day of rest in seven. (Jobs Development Commission)

House Bill No. 1047 - Tourist-oriented Directional Signs. This bill requires the Department of Transportation to establish rules for the erection and maintenance of tourist-oriented directional signs. (Jobs Development Commission)

House Bill No. 1048 - New Manufacturing Machinery and Equipment Sales Tax Exemption. This bill removes the sales and use tax for new manufacturing machinery and equipment purchases. (Jobs Development Commission)

House Bill No. 1049 - License Fee in Lieu of Property Tax on State-owned Property. This bill provides for payment of a license fee in lieu of property tax on leasehold interests and improvements on state-owned property when used for tourism or concession purposes. (Jobs Development Commission)

House Bill No. 1050 - Definitions of Eligible Uses of Charitable Gaming Proceeds. This bill establishes a descriptive listing of eligible uses of net proceeds from charitable gaming under each broad category of eligible uses defined under North Dakota Century Code Section 53-06.1-01(7). (Judiciary Committee)

House Bill No. 1051 - Charitable Gaming Organizations - Licensure. This bill provides that a Class A charitable gaming license would be issued to an eligible organization that is prohibited from expending charitable gaming net proceeds for the organization's own purposes or benefits and a Class B license would be issued to an eligible organization that is permitted to expend charitable gaming net proceeds for its own purposes and eligible uses. This bill also provides that an eligible organization that possesses a retail alcoholic beverage license could not have that license suspended, revoked, or denied simply because the organization is found to have committed a charitable gaming violation. (Judiciary Committee)

House Bill No. 1052 - Licensing Fees for Manufacturers of Charitable Gaming Tickets and Bingo Cards. This bill provides that the manufacturer of both charitable gaming tickets and bingo cards is subject to a single \$2,000 license fee. (Judiciary Committee)

House Bill No. 1053 - Tip Pooling - Organization Discretion. This bill provides that it is within the sole discretion of each charitable gaming licensee whether to require the pooling of tips received by twenty-one dealers. (Judiciary Committee)

House Bill No. 1054 - Treatment and Rehabilitation of Compulsive Gamblers - Demonstration Program. This bill requires the Department of Human Services to develop a demonstration program for the treatment and rehabilitation of compulsive gamblers and appropriates \$240,000 from charitable gaming tax revenues to the department for the purpose of implementing the program. (Judiciary Committee)

House Bill No. 1055 - Legislative Document Printing. This bill provides that the printing of legislative documents is to be in accordance with the rules of the Senate and the House or as directed by the Legislative Council. (Legislative Management Committee)

House Bill No. 1056 - Engrossing and Enrolling Procedures. This bill repeals the procedure of engrossing and enrolling legislative bills and resolutions. (Legislative Management Committee)

House Bill No. 1057 - Code Publication and Fees for Documents. This bill authorizes the Legislative Council to establish specifications for publication of the North Dakota Century Code, to contract with a publisher with respect to publication services, to continue any agreement with a publisher and contract for continuing publication services, and to determine access to legislative information services

and impose fees for providing these services and copies of legislative documents. (Legislative Management Committee)

House Bill No. 1058 - Solid Waste Management Plans and Regional Programs. This bill requires each city and county to participate in a comprehensive solid waste management plan and allows cities, counties, and townships to join in a regional solid waste management agency or program. (Political Subdivisions Committee)

House Bill No. 1059 - Solid Waste Public Educational Program. This bill requires the Department of Health and Consolidated Laboratories to establish a public educational program that encourages reduction of solid waste. (Political Subdivisions Committee)

House Bill No. 1060 - Certification of Landfill Operators and Assessment of Solid Waste Management Facilities. This bill requires the owner or operator of a municipal landfill to be certified; requires the owner or operator of a solid waste management facility accepting more than an average of 300 tons of solid waste per day to submit annual detailed assessments of the facility; and increases the penalty for a violation of the Solid Waste Management and Land Protection Act from \$300 per day to \$1,000 per day. (Political Subdivisions Committee)

House Bill No. 1061 - Solid Waste Management Fund. This bill establishes a solid waste management fund for the primary purpose of providing assistance to businesses for the development of markets for recycled products. (Political Subdivisions Committee)

House Bill No. 1062 - Solid Waste Management Authorities. This bill provides for the establishment of solid waste management authorities and provides that solid waste management authorities may be established only in accordance with the provisions of the bill. (Political Subdivisions Committee)

House Bill No. 1063 - Prohibition of Littering and Open Burning. This bill establishes a new prohibition on littering and open burning and repeals current littering provisions. (Political Subdivisions Committee)

House Concurrent Resolution No. 3001 - Review of Department of Human Services Development of Community Services for the Mentally Ill and Chemically Dependent. This resolution directs the Legislative Council to monitor during the 1991-92 interim the continued develop-

ment of a continuum of services for the mentally ill and chemically dependent including expanded community services and related changes in the role of the State Hospital. (Budget Committee on Human Services)

House Concurrent Resolution No. 3002 - Monitor of Implementation of Federal Family Support and Medicare Catastrophic Coverage Acts. This resolution directs the Legislative Council to continue monitoring the implementation of federal Family Support and Medicare Catastrophic Coverage Acts during the 1991-92 interim. (Budget Committee on Long-Term Care)

House Concurrent Resolution No. 3003 - Use of Gasoline and Motor Fuel Excise Taxes. This resolution proposes a constitutional amendment to amend Section 11 of Article X of the Constitution of North Dakota to provide that revenue from gasoline and motor fuel excise taxes derived from gasoline and fuel used in vessels and recreational vehicles not licensed for use on public highways must be used for constructing, reconstructing, repairing, and maintaining public facilities related to vessels and recreational vehicles not licensed for use on public highways. (Game and Fish Committee)

House Concurrent Resolution No. 3004 - Removal of the Names, Locations, and Missions of the Institutions of Higher Education. This resolution proposes a constitutional amendment to remove constitutional references to the names, locations, and missions of the institutions of higher education. (Higher Education System Review Committee)

House Concurrent Resolution No. 3005 - Higher Education Administration. This resolution proposes a constitutional amendment to replace constitutional references to the Commissioner of Higher Education with a chief executive officer, to provide for submission of budget requests by the chief executive officer, and to remove the restriction on the use of funds appropriated for one institution from being used for another institution. (Higher Education System Review Committee)

House Concurrent Resolution No. 3006 - Annual Session Procedures. This concurrent resolution directs the Legislative Council to study and establish procedures necessary to implement annual sessions of the Legislative Assembly beginning in 1993 and 1994. (Legislative Management Committee)

SENATE

Senate Bill No. 2023 - Consolidation of Local Elections. This bill consolidates elections of school districts, cities, and park districts with the statewide primary election to be held on the second Tuesday in June in each even-numbered year. This bill becomes effective with the primary election of 1992 and provides that the 1993 election will be the last regular school election held in an odd-numbered year. (Advisory Commission on Intergovernmental Relations)

Senate Bill No. 2024 - Liens and Security Interests Relating to Farm Products. This bill requires the Secretary of State to establish a computerized central notice system under which a person can perfect a security interest in a farm product or create a statutory agricultural lien by filing at either the Secretary of State's office or at any register of deeds' office in the state. (Agriculture Committee)

Senate Bill No. 2025 - Pesticide Container Collection and Disposal Program. This bill requires the Commissioner of Agriculture, in consultation with other state officials and representatives of various interests, to design and implement a pilot project to collect and recycle or dispose of agricultural pesticide containers. (Agriculture Committee)

Senate Bill No. 2026 - Unified Court System. This bill abolishes the county court as of January 1, 1995; provides for the establishment of a single trial court system consisting of eight judicial districts; and reduces the number of district court judgeships from 53 to 42 by December 31, 1998. The bill also provides that on January 1, 1995, county court judges elected in 1994 become interim district court judges with limited original jurisdiction. If an interim district court judge is elected to a district court judgeship or when the interim district court judgeship is abolished, 80 percent of the court revenue deposited in the county treasury is to be deposited in the state general fund. (Budget Committee on Government Administration)

Senate Bill No. 2027 - Contracting for County Court Services and Expanding Court Authority. This bill gives all counties the authority to contract with the district court for county court services; gives the Supreme Court the authority to determine whether a vacant district court judgeship should be continued, abolished, or transferred to another judicial district; and increases the civil jurisdictional limit of a county court judge from \$10,000 to \$15,000. (Budget Committee on Government Administration)

Senate Bill No. 2028 - Term of County Court Judges and Selection of Presiding Officials. This bill extends the term of a county court judge from four to six years, allows county court judges to participate in the selection of the Chief Justice of the Supreme Court, and allows district and county court judges to elect the presiding district court judge of their judicial district. (Budget Committee on Government Administration)

Senate Bill No. 2029 - Allocation of the Annual Net Income of the Bank of North Dakota. This bill provides that the annual net income of the Bank of North Dakota is to be allocated for various purposes, including the state general fund, partnership

in assisting community expansion fund, and agriculture-related loan programs. (Budget Committee on Government Finance)

Senate Bill No. 2030 - Certificate of Need Approval for Organ or Tissue Transplant Centers. This bill provides that the certificate of need program requirements apply to the establishment or expansion of an organ or tissue transplant center. (Budget Committee on Human Services)

Senate Bill No. 2031 - Organ and Tissue Transplantation Policy. This bill enacts a legislative policy statement on organ and tissue transplantation, requires that any special Health Council committee studying transplantation issues have as one of its members a transplant recipient, and adds Health Council duties and responsibilities relating to state agency reimbursement of transplant procedures and transplantation promotional and educational programs. (Budget Committee on Human Services)

Senate Bill No. 2032 - Optional Supplementation Matching Deficiency Appropriation. This bill provides a deficiency appropriation to the Department of Human Services for state matching of county optional supplementation and general assistance payments for individuals in basic care facilities for the period August 1990 through June 30, 1991, in the amount of \$481,000. This bill also requires a Legislative Council study of the basic care program during the 1991-92 interim. (Budget Committee on Long-Term Care)

Senate Bill No. 2033 - Establishment of Multicounty Social Service Districts. This bill encourages the voluntary establishment of multicounty social service districts and appropriates \$250,000 for financial incentives to encourage the creation of those districts. (Budget Committees on Long-Term Care and Human Services)

Senate Bill No. 2034 - School District Restructuring and Cooperative Agreements. This bill establishes a separate reorganization procedure for school districts that restructure under NDCC Chapter 15-27.6 and establishes planning grants and supplemental payments for school districts that enter into cooperative arrangements to purchase or provide educational services. (Education Finance Committee)

Senate Bill No. 2035 - Filing of Initiative, Referendum, and Recall Petitions. This bill provides that an initiative, referendum, and recall petition must be submitted to the Secretary of State by 5:00 p.m. on the day designated as the deadline for submitting the petition. (Elections Committee)

Senate Bill No. 2036 - Clam Licenses. This bill establishes resident commercial clam, nonresident commercial clam, and resident clam licenses. (Game and Fish Committee)

Senate Bill No. 2037 - Boating Collision, Accident, Casualty, and Liability Reports. This bill requires the Game and Fish Commissioner to establish by rule the minimum property damage for which a collision, accident, casualty, or liability report would have to be filed with the commissioner. (Game and Fish Committee)

Senate Bill No. 2038 - Hunting While Intoxicated. This bill establishes implied consent to chemical testing for purposes of determining intoxication while being afield with a firearm or bow and arrow. (Game and Fish Committee)

Senate Bill No. 2039 - Boating While Intoxicated. This bill establishes implied consent to chemical testing for purposes of determining intoxication while operating a motorboat or vessel. (Game and Fish Committee)

Senate Bill No. 2040 - Hours for Hunting Game Birds and Protected Animals. This bill enables the Governor to establish by proclamation the hours for hunting game birds and protected animals. (Game and Fish Committee)

Senate Bill No. 2041 - Hunter Safety Education Courses. This bill requires that no person born after December 31, 1961, could purchase or obtain a hunting license unless that person has satisfactorily completed a hunter safety education course. (Game and Fish Committee)

Senate Bill No. 2042 - Garments Worn by Big Game Hunters. This bill requires hunters to wear a head covering and an outer garment above the waistline, both of daylight fluorescent orange color, totaling 400 square inches of solid fluorescent orange color, while hunting big game. (Game and Fish Committee)

Senate Bill No. 2043 - Fur-bearers. This bill expands the definition of fur-bearers to include mountain lions and black bears. (Game and Fish Committee)

Senate Bill No. 2044 - Endangered Species. This bill expands the coverage of the state's endangered species law to include any species determined by the Game and Fish Commissioner to be threatened or endangered. (Game and Fish Committee)

Senate Bill No. 2045 - Threatened or Endangered Wildlife and Plants. This bill makes it a Class C felony for anyone to hunt, take, harvest, collect, distribute, commercialize in, or transport any species of wildlife or plant determined by the Governor to be threatened or endangered. (Game and Fish Committee)

Senate Bill No. 2046 - Endangered Fish. This bill makes it a Class C felony for any person to catch, take, kill, or destroy any fish, fish parts, or fish eggs of any fish species determined by the Game and Fish Commissioner to be of special concern. (Game and Fish Committee)

Senate Bill No. 2047 - Guns Lawfully Usable in Pursuing or Taking Game Birds. This bill enables the Governor to specify by proclamation which guns may lawfully be used in pursuing or taking game birds. (Game and Fish Committee)

Senate Bill No. 2048 - Forfeiture of Game and Fish License Fees. This bill provides that the license fee of any person who applies for a license issued by lottery when by law or proclamation that person is ineligible to apply because of any waiting period is forfeited to the Game and Fish Department. (Game and Fish Committee)

Senate Bill No. 2049 - Game and Fish Advisory Board. This bill reduces the number of meetings that each member of the Game and Fish

Advisory Board must hold in that member's district from two each fiscal year to one each fiscal year. (Game and Fish Committee)

Senate Bill No. 2050 - Director of the Game and Fish Department. This bill changes the name of the commissioner of the Game and Fish Department to the director of the Game and Fish Department. (Game and Fish Committee)

Senate Bill No. 2051 - Governor's Big Game Proclamation. This bill enables the Governor to determine by proclamation the time period for which a recipient of an antelope license obtained by lottery is ineligible to again apply for an antelope license. (Game and Fish Committee)

Senate Bill No. 2052 - Private Shooting Preserves. This bill allows the Game and Fish Commissioner to regulate private preserves by adopting rules relating to operating permits, fees, bond requirements, in the operation of private shooting preserves. (Game and Fish Committee)

Senate Bill No. 2053 - Medical Assistance Eligibility Expansion. This bill appropriates \$11,339,905, of which \$2,686,563 is the state's responsibility, to the Department of Human Services for the purposes of adopting options available under federal law to extend eligibility for medical assistance under Medicaid to certain infants and pregnant women. (Industry and Business Committee)

Senate Bill No. 2054 - Department of Tourism. This bill establishes a State Department of Tourism for the purpose of fostering and promoting tourism to and within the state and for full development of the state's tourism resources. (Jobs Development Commission)

Senate Bill No. 2055 - Tourism Promotion Fund. This bill provides that all sales tax revenue on lodging accommodations collected under North Dakota Century Code Chapter 57-39.2 would be placed in a tourism promotion fund and appropriates \$8,900,000 from the fund for the Department of Tourism. (Jobs Development Commission)

Senate Bill No. 2056 - Tourism Matching Grant Program. This bill establishes a matching grant program for tourism promotion and development in the state. The bill appropriates \$375,000 for the program. (Jobs Development Commission)

Senate Bill No. 2057 - State Park Permits. This bill increases the annual permit fee on motor vehicles entering state parks to a maximum of \$20 and eliminates the free senior citizen entrance permit. (Jobs Development Commission)

Senate Bill No. 2058 - Economic Development. This bill draft uses the profits of the Bank of North Dakota to provide a comprehensive economic development program. (Jobs Development Commission)

Senate Bill No. 2059 - Interstate Banking. This bill authorizes nationwide interstate banking. (Jobs Development Commission)

Senate Bill No. 2060 - Intrastate Banking. This bill removes the restrictions on the number of facilities that a bank may have for drive-in or walkup services other than at a main bank building. (Jobs Development Commission)

Senate Bill No. 2061 - Income Tax Credits on the Short Form. This bill allows the income tax

credit for investment in venture capital corporations and the Myron G. Nelson Fund to be claimed under the optional simplified method of computing the state income tax. (Jobs Development Commission)

Senate Bill No. 2062 - Venture Capital Corporation Tax Credits. This bill allows tax credits for investments by banks, savings and loan associations, trust companies, and insurance companies in venture capital corporations in the same manner as provided with respect to the Myron G. Nelson Fund. (Jobs Development Commission)

Senate Bill No. 2063 - Federal Gaming Excise Tax Liability. This bill allows charitable gaming organizations to deduct federal gaming excise taxes from the organization's gross proceeds and allows affected organizations to treat as an additional expense federal excise taxes incurred or paid by the organization for the period beginning January 1, 1986, and ending on July 1, 1991. (Judiciary Committee)

Senate Bill No. 2064 - Legislative Overview of Charitable Gaming Activities. This bill requires the Legislative Council to appoint an interim committee that would review rules and laws governing charitable gaming. (Judiciary Committee)

Senate Bill No. 2065 - State Gaming Commission. This bill replaces the North Dakota Racing Commission with a State Gaming Commission, which would be charged with the responsibility of regulating charitable gaming activities, including ontrack and offtrack parimutuel horse racing. (Judiciary Committee)

Senate Bill No. 2066 - Attachment Procedures. This bill allows, prior to a hearing, the prejudgment attachment by a creditor of a debtor's property if the creditor establishes the basis and amount of the claim against the debtor and demonstrates the existence of extraordinary circumstances justifying the prehearing attachment. This bill also clarifies the debtor's right to a hearing within 14 days after a writ of attachment is issued. (Judiciary Committee)

Senate Bill No. 2067 - Tax Credits for Residents of Dissolved and Annexed School Districts. This bill amends North Dakota Century Code Sections 15-27.4-03 and 15-27.2-04(6) to provide that tax credits under those sections are available to those who own property in the dissolved or annexed school district rather than only to those who are residents of the affected district. (Judiciary Committee)

Senate Bill No. 2068 - Technical Corrections Act. This bill eliminates inaccurate or obsolete name and statutory references or superfluous language in the code. (Judiciary Committee)

Senate Bill No. 2069 - State Auditor's Office to Audit Comprehensive Annual Financial Report. This bill provides that the State Auditor's office shall audit the state's comprehensive annual financial report, determine the contents of the audits and reviews of state agencies, collect from an agency the amount necessary to pay private accounting firms for an audit, and provide for performance audits of state agencies as determined necessary by the State Auditor or Legislative Audit and Fiscal Review Committee. (Legislative Audit and Fiscal Review Committee)

Senate Bill No. 2070 - State Auditor's Office Political Subdivision Operating Account. This bill provides that the State Auditor's audits of political subdivisions are to be funded within the limits of legislative appropriations from a State Auditor's office operating account that contains the amounts charged for the audits of political subdivisions. (Legislative Audit and Fiscal Review Committee)

Senate Bill No. 2071 - Legislative Voucher Approval. This bill provides that the President Pro Tempore of the Senate, rather than the President, and the Speaker of the House are to approve vouchers for payment of expenses of the Legislative Assembly during a legislative session. (Legislative Management Committee)

Senate Bill No. 2072 - Duties of Legislative Employees. This bill removes the statutory listing of the duties of the Secretary of the Senate and Chief Clerk of the House of Representatives and provides that duties of those officers are those duties required of them by the rules of the appropriate chamber. (Legislative Management Committee)

Senate Bill No. 2073 - Staffing and Appointments of Various Committees. This bill replaces the Higher Education System Review Committee with the Legislative Council for the purpose of meeting with the Board of Higher Education, removes appointive authority of the interim Administrative Rules Committee, and provides that staffing of the Special Road Advisory Committee, Capitol Grounds Planning Commission, Regulatory Reform Review Commission, and the North Dakota-Saskatchewan-Manitoba Boundary Advisory Committee is to be performed by agencies other than the Legislative Council. (Legislative Management Committee)

Senate Bill No. 2074 - Appointments to the Legislative Council. This bill provides that the presiding officers of the respective chambers, upon recommendation of the leaders of the political factions, are to make the appointments to the Legislative Council. (Legislative Management Committee)

Senate Bill No. 2075 - State Building Official. This bill requires the director of the Office of Management and Budget to employ a state building official who is certified by the International Conference of Building Officials; provides that the 1988 Uniform Building Code is the State Building Code; and allows cities, townships, and counties to amend the State Building Code to conform to local needs if the amendments do not exceed those of the State Building Code. (Political Subdivisions Committee)

Senate Bill No. 2076 - State Building Code. This bill provides that the 1988 Uniform Building Code is the State Building Code and allows cities, townships, and counties to amend the State Building Code to conform to local needs. (Political Subdivisions Committee)

Senate Bill No. 2077 - Board of University and School Lands Payments in Lieu of Taxes. This bill requires the Board of University and School Lands to make payments in lieu of taxes to political subdivisions for real property owned by the Board of University and School Lands which is leased from the board and is not subject to ad valorem taxes. (Political Subdivisions Committee)

Senate Bill No. 2078 - North Dakota State Retirement and Investment Office. This bill makes the establishment of the North Dakota State Retirement and Investment Office permanent by repealing the sunset provisions on 1989 Senate Bill No. 2030 and makes the repeal retroactive to June 29, 1991. (Retirement Committee)

Senate Concurrent Resolution No. 4001 - Election Laws Study. This resolution directs the Legislative Council to study North Dakota election laws, with an emphasis on resolving inconsistencies and conflicting provisions and on establishing more uniform and effective election procedures. (Elections Committee)

Senate Concurrent Resolution No. 4002 - Subsidized Health Insurance Program Study. This resolution directs the Legislative Council to study the feasibility and ramifications of adopting and implementing a state subsidized health insurance program, on a sliding fee scale basis, for certain uninsured and underinsured residents. (Industry and Business Committee)

Senate Concurrent Resolution No. 4003 - State Government Services Privatization. This resolution directs the Legislative Council to study the privatization of some state government services. (Jobs Development Commission)

Senate Concurrent Resolution No. 4004 - Economic Development Public Policy. This resolution directs the Legislative Council to study, analyze, and evaluate, with the assistance of a consultant, public policy as determined by the Legislative Assembly and its relationship to the state's ability to enhance economic development. (Jobs Development Commission)

Senate Concurrent Resolution No. 4005 - Retirement and Investment Office, Public Employees Retirement System, and Teachers' Fund for Retirement Consolidation Study. This resolution directs the Legislative Council to study the feasibility and desirability of consolidating the Retirement and Investment Office, Public Employees Retirement System, and Teachers' Fund for Retirement. (Retirement Committee)